

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.

OMNIBUS ORDER

Pending before the Court are Defendant Brian Davison and non-party Nicole Davion's respective Motions to Quash Receiver's Subpoena or, Alternatively,

Motions for Protective Order. (Docs. 637, 638). The Receiver filed a consolidated response to both motions, (Doc. 669), and Mr. and Ms. Davison filed reply briefs, (Docs. 703, 704). The matters are therefore ripe for the Court's consideration. In the interests of judicial economy and efficiency, the Court dispenses with any unnecessary recitation of the procedural posture of this action, the parties' arguments, or well-established legal standards. The Court carefully reviewed the parties' submissions and considered every argument raised. The Court's ruling as to each motion is set forth below.

DISCUSSION

1. Mr. Davison's Motion to Quash Receiver's Subpoena or, Alternatively, Motion for Protective Order (Doc. 703)

The receiver acts as an arm of the Court. *SEC v. Loving Spirit Found. Inc.*, 392 F.3d 486, 490 (D.C. Cir. 2004) ("Neither a plaintiff nor a defendant, the receiver functions as an arm of the court appointed to ensure that prevailing parties can and will obtain the relief it orders.") (citation omitted). "A 'receiver's authority,' therefore, 'is defined solely by the order of the appointing court.'" *SEC v. Loving Spirit Found. Inc.*, 392 F.3d 486, 490 (D.C. Cir. 2004) (quoting 13 James Wm. Moore et al., *Moore's Federal Practice* ¶ 66.04[1][b]). "[D]istrict courts have 'broad powers and wide discretion to determine relief in an equity receivership.'" *SEC v. Complete Bus. Sols. Grp., Inc.*, 44 F.4th 1326, 1333 (11th Cir. 2022) (quoting *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992)).

When the Court appointed the Receiver, it “authorized, empowered, and directed” him to do, in relevant part, the following:

1. Take immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants whatsoever and wheresoever . . . and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court.
2. Investigate the manner in which the affairs of the Corporate Defendants and Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Corporate Defendants and Relief Defendants and their investors and other creditors as the Receiver deems necessary against those . . . which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in EquiAlt Fund, LLC, EquiAlt Fund II, LLC, EquiAlt Fund III, LLC, and EA SIP, LLC, their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in EquiAlt Fund, LLC, EquiAlt Fund II, LLC, EquiAlt Fund III, LLC, and EA SIP, LLC; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.
3. Initially recover, control and possess liquid assets, known real estate, LLC assets and high-end personal assets purchased with funds traceable from investor proceeds, and trusts if the Receiver deems appropriate.

7. Defend, compromise or settle legal actions, including the instant proceeding, in which the Corporate Defendants, the

Relief Defendants, or the Receiver are a party, commenced either prior to or subsequent to this Order.

(Doc. 11 at 2-3).

These enumerated powers do not explicitly include the ability to conduct or request discovery, including the power to issue subpoenas. But the absence of such explicit language does not mean that the Receiver lacks such powers. *See SEC v. Onix Cap., LLC*, No. 16-24678-CIV, 2017 WL 6610903, at *1 (S.D. Fla. July 24, 2017), *report and recommendation adopted*, No. 16-24678-CIV, 2017 WL 6610082 (S.D. Fla. Oct. 16, 2017) (noting that the “Receivership Order outlines a broad range of powers and responsibilities, which [the court] find[s] cannot be fully executed without the ability to issue subpoenas or conduct other discovery”).¹ After all, the purpose of a receivership, like the one in this case, “is to protect the estate property and ultimately return that property to the proper parties in interest.” *SEC v. Credit Bancorp, Ltd.*, 93 F. Supp. 2d 475, 476 (S.D.N.Y. 2000). To effectuate that purpose, this Court granted broad powers to the Receiver. (Doc. 11). Those powers would be significantly hindered (if not impossible) if they did not implicitly contain the power to seek discovery. For instance, the Receiver may “institute . . . legal proceedings,”

¹ Out of an abundance of caution, the Magistrate Judge in *Onix Capital* recommended that the Receivership Order be amended to include a provision for the issuance of subpoenas. *Onix Capital, LLC*, 2017 WL 6610903, at *1. But the Magistrate Judge also recognized that “the current Receivership impliedly allows the [receiver] to seek discovery as part of her authorized duties.” *Id.*

but without the ability to conduct discovery in those proceedings, the ability to institute a legal action would be meaningless.

In addition, as it concerns Mr. Davison, this Court ordered his (and the other defendants') full cooperation when the Court appointed the Receiver:

15. The Corporate Defendants and Relief Defendants, their principals, and their respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver. The Corporate Defendants and Relief Defendants and their principals and respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above.

(Doc. 11 at 6-7). The subpoena at issue largely seeks documents and information related to assets for which the Receiver suspects some level of fraud or misrepresentation is involved by Mr. Davison. (Doc. 669 at 7; *see also* Doc. 767 (motion for order to show cause regarding missing coins)). As outlined above, it is Mr. Davison's obligation to assist the Receiver in securing the necessary assets, which would include assistance into any investigation for missing assets. The Court thus finds that the Receiver has the authority to issue the discovery requests to Mr. Davison, and the subpoena topics generally comport with the Receiver's mandate as outlined in the order appointing him. (Doc. 637-1); *see SEC v. Vescor Cap. Corp.*, 599 F.3d 1189, 1197 (10th Cir. 2010) (“[I]n a case involving a Ponzi scheme, the interests of the [r]eceiver are very broad and include not only protection of the receivership

res, but also protection of defrauded investors and considerations of judicial economy”).²

But the Court agrees with Mr. Davison’s contention that the Receiver’s discovery requests must generally conform with the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 1 (“These rules govern the procedure in all civil actions and proceedings in the United States district courts.”). That is, the requests must be relevant and proportional to the needs of the case. Fed. R. Civ. P. 26(c)(1). At this point, the only apparent, live dispute remaining between the Receiver and Mr. Davison concerns the missing platinum and gold coins. (*See* Docs. 767, 768). The Receiver, for instance, does not seek an order to show cause on the basis of any other asset. (Doc. 767). Therefore, although at the time the subpoenas may have been issued there may have been questions related to other assets, the Court only considers those requests in the subpoena that concern the missing coins to be the relevant inquiries. Specifically, those requests are numbers 4, 5, and 6. (Doc. 637-1 at 8). The Court finds those requests to be relevant and proportional to the needs of the case.

Accordingly, Defendant Brian Davison’s Motion to Quash Receiver’s Subpoenas or, Alternatively, Motion for Protective Order is GRANTED IN PART and DENIED IN PART. The Court narrows the topics of the subpoenas to those

² For these reasons, the Court finds Mr. Davison’s arguments that the Receiver cannot request discovery because he cannot move under Rule 34, 45, 69, or 70 to be unpersuasive.

requests concerning the missing coins. The motion is denied to the extent it seeks any greater or different relief. To the extent that the other subpoena requests remain or become relevant (which is not evident from the briefing or the record thus far), this decision is without prejudice to the Receiver's ability to issue a subsequent subpoena requesting the same or similar relief.

2. Ms. Davison's Motion to Quash Receiver's Subpoena or, Alternatively, Motion for Protective Order (Doc. 704)

The Receiver issued a nearly identical subpoena to Ms. Davison, which she now seeks to quash. For the reasons the Court has already explained, the power to issue a subpoena is within the realm of the implied powers granted to the Receiver by the Court. And for the reasons already provided, the Court considers those requests dealing with the allegedly missing assets to be the only relevant inquiries in the subpoena at this stage.

Unlike Mr. Davison, however, for whom there is a Court order to cooperate in the recovery of assets, Ms. Davison is under no such order as a non-party to this litigation. The Receiver attempts to paint Ms. Davison as an interested party whose privacy interests are diminished. (Doc. 669 at 18). But the Receiver only points to Ms. Davison's association to this case as Mr. Davison's spouse. The Receiver does not adequately explain how Ms. Davison would have discoverable information related to the missing assets independent from Mr. Davison. In fact, the Receiver's motion for order to show cause (Doc. 767) alleges only that Mr. Davison has engaged in wrongdoing with the missing assets. In other words, the Receiver has

provided no basis by which to conclude that Ms. Davison would be in possession of the requested, discoverable information. *See Porter v. Ray*, 641 F.3d 1315, 1324 (11th Cir. 2006) (“[T]he discovery rules do not permit the [parties] to go on a fishing expedition.”). Moreover, the SEC is on record in this case as saying that neither spouse of the Defendants was involved in the businesses at issue in this case. (Doc. 704-1 at 21:2-8). Finally, Ms. Davison has some privacy interest in her financial information, *see Woodward v. Berkery*, 714 So. 2d 1027, 1035 (Fla. 4th DCA 1998) (“[P]ersonal finances are among those private matters kept secret by most people.”), and the Receiver’s scant legal authority in opposition to that proposition does not persuade the Court to overlook that interest. (*See* Doc. 669 at 19). For these reasons, the Court concludes that the subpoena targeted at Ms. Davison unduly burdens her and fails to establish its relevance at this stage. *See* Fed. R. Civ. P. 45(d)(3)(A)(iv) (“[T]he court for the district where compliance is required must quash or modify a subpoena that . . . subjects a person to undue burden.”); *see also Zukoski v. Phila. Elec. Co.*, No. CIV. A. 93-4780, 1994 WL 637345, at *3 (E.D. Penn. Nov. 14, 1994) (“It is a generally accepted rule that standards for non-party discovery require a stronger showing of relevance than for party discovery.”).

Based on the above analysis, the Court finds that quashing the subpoena against Ms. Davison is appropriate. Therefore, Nicole Davion’s Motion to Quash Receiver’s Subpoena or, Alternatively, Motion for Protective Order is **GRANTED**. To the extent that any information learned from the subpoena issued to Mr. Davison

causes the Receiver to believe a new subpoena is appropriate for Ms. Davison, the Receiver may issue a new subpoena on that basis.

CONCLUSION

Accordingly, the Court **ORDERS** that:

1. Defendant Brian Davison's Motion to Quash Receiver's Subpoena or, Alternatively, Motion for Protective Order (Docs. 637) is **GRANTED IN PART** and **DENIED IN PART**.
2. Non-Party Nicole Davison's Motion to Quash Receiver's Subpoena or, Alternatively, Motion for Protective Order (Docs. 638) is **GRANTED**. The subject subpoena (Doc. 638-1) is hereby **QUASHED**, and Nicole Davison is relieved of any obligation to comply with the subpoena, absent further court order.

So **ORDERED** in Tampa, Florida on May 16, 2023.



Mac R. McCoy
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties