

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SECURITIES AND EXCHANGE	§	
COMMISSION,	§	
Plaintiff,	§	Civil Action No. 4:11-cv-655
	§	
v.	§	
	§	
JAMES G. TEMME, and STEWARDSHIP	§	
FUND, LP,	§	
Defendants.	§	

**RECEIVER’S RESPONSE TO JAMES G. TEMME’S EMERGENCY MOTION TO
REPLACE THE RECEIVER AND MOTION FOR PROTECTIVE ORDER**

COMES NOW Keith Miles Aurzada, as Receiver for James G. Temme (the “Receiver”), and files this his Response (the “Response”) to James G. Temme’s Emergency Motion to Replace the Receiver and Motion for Protective Order (the “Motion”). In support of this Response, the Receiver respectfully shows the Court as follows:

James G. Temme (“Temme”) has shown no legal or factual basis for the relief requested in his Motion. The Receiver’s conduct has been at all times proper and in full compliance with the Court’s orders and all applicable ethical rules. Temme’s Motion is devoid of a single statute, case, or rule supporting his contentions, and the hollow nature of Temme’s allegations are displayed by the Receiver’s correspondence with Temme’s counsel, true and correct copies of which are attached hereto as Exhibit A and incorporate by reference. The Motion has no basis in law or fact, and is an inefficient use of the resources of the Court, the Receivership Estates, and even Temme. The Court should deny the Motion.

FACTUAL BACKGROUND

As Mr. Temme’s counsel himself admitted, the “emails tell the story.” (See Exhibit A, November 4, 2011 e-mail time stamped 8:43:35 a.m.) Such e-mails show the following:

- On November 3, 2011, as part of his court-ordered duties, the Receiver contacted Mr. Temme to schedule a meeting. The prior day, the Receiver had obtained Temme's contact information in Temme's counsel's presence, in the attorney conference room of the 192nd Judicial District Court of Dallas County, Texas. Temme's counsel made no objection to the Receiver contacting Mr. Temme directly at that time.
- On November 4, 2011, at 5:32 a.m., Temme's counsel insinuated that either the Receiver or the Receiver's counsel had violated an unspecified ethical rule.
- The Receiver explained that his communication with Temme was made in his capacity as Receiver, without his counsel involved. The Receiver asked for confirmation that his contact had not violated any applicable ethical rule. The Receiver's request was based on his actual knowledge of Texas Rule of Professional Conduct 4.02, which applies to a lawyer's contact with a represented person when the lawyer is "representing a client."
- The Receiver informed Temme's counsel of the time and place of the meeting and **invited Temme's counsel to attend.**
- Temme's counsel cancelled the meeting, again insinuated that the Receiver had violated ethical rules, and threatened "to go to the court about this."
- After Temme's counsel cancelled the informal interview with the Receiver (without ever claiming a scheduling conflict or requesting a rescheduling), the Receiver appropriately conferred with Temme's counsel regarding deposition dates. As the SEC has noted, the Receiver is entitled to use the Federal Rules of Civil Procedure to carry out this Court's order. If Temme will not provide information to the Receiver in an informal manner, the Receiver is undoubtedly entitled (*if not required*) to obtain such information through formal discovery.
- Temme's counsel e-mailed the SEC and the Receiver (without copying the Receiver's counsel) and formally asserted: "***[The Receiver] has violated the ethical rules against contacting a represented person, insisted that the ethical rules do not apply to him, threatened retaliation, and acted unprofessionally. The emails tell the story.***" (See Exhibit A, November 4, 2011 e-mail time stamped 8:43:35 a.m.) (Emphasis added.)
- The Receiver's counsel e-mailed Temme's counsel as follows:

Mr. Helms -

Mr. Aurzada forwarded me your e-mail below. As you are aware from my appearance for Mr. Aurzada in both state and federal court, I represent Mr. Aurzada as his counsel. I am troubled that you would communicate with the Commission and Mr. Aurzada regarding your threat to remove him as receiver without cc'ing me. Going forward, please ensure I am included on any communication from you to Mr. Aurzada.

Next, I was unaware of Mr. Aurzada's contact of Mr. Temme until this morning, and in no way encouraged Mr. Aurzada to do so.^[1] Texas Rule of Professional Conduct 4.02 and the comments thereto are abundantly clear that nothing about Mr. Aurzada's contact was improper. Mr. Aurzada, as an officer of the United States District Court, has no client, and was acting in his capacity as the court appointed receiver. If you have any authority to the contrary, please bring it to our attention immediately, as we believe any motion to the court would violate Rule 11. I will also note that on November 2, Mr. Aurzada requested Mr. Temme's contact information in your presence, in the attorney conference room of the 192nd Judicial District Court of Dallas County, Texas. You made no objection to the receiver contacting Mr. Temme directly at any time.

Finally, your assertion that the receiver's request for a deposition is retaliation is spurious. The receiver was willing to informally interview your client, but you have not allowed that to proceed. Additionally, we have requested Mr. Temme's laptop for a week, and you have not turned it over. Mr. Aurzada is simply attempting to discharge his duties, as required by the court's order. Based on Mr. Temme's comments on Wednesday, we understood he was willing to cooperate. We are disappointed that today's events appear to indicate otherwise.

- Thereafter, Temme's counsel failed to provide any authority for his serious assertion to the SEC that the Receiver had violated an ethical rule.
- In response to a second request for authority from the Receiver's counsel, Temme's counsel changed his tune, and at 1:02 p.m. appeared to concede that no violation of the Texas ethical rules had occurred.

Despite Temme's concession that the Receiver had not violated the Texas ethical rules, Temme had apparently passed the proverbial point of no return, and filed his motion anyway, despite a complete lack of factual basis or legal authority.

ARGUMENT AND AUTHORITY

The SEC's Response to Temme's Motion to Replace the Receiver and Motion for Protective Order (Docket No. 36) is incorporated by reference, and the Receiver hereby adopts the arguments and authorities set forth therein.

Federal Rule of Civil Procedure 7(b)(1) requires motions to state with particularity the grounds for the relief sought. Here, the Receiver is unaware of any legal or factually accurate basis for the relief sought. Temme states that "the Receiver insisted on being able essentially to

¹ The Receiver's counsel was in fact in Collin County District Court the morning of November 11, 2011, and was in no event going to attend the Receiver's meeting with Temme, of which the Receiver's counsel was unaware.

cross-examine Mr. Temme on the same subject as the criminal investigation, *without Mr. Temme's counsel present.*" (Motion, at p. 5) (Emphasis in original.)

This allegation is pure fiction and lacks evidentiary support. The Receiver in fact invited Temme's counsel to attend the scheduled meeting. When the meeting was cancelled, the Receiver requested a formal deposition, during which Temme's counsel would obviously be present. All that the Receiver insisted on was that his contact with Mr. Temme did not violate applicable ethical rules. Temme now apparently concedes the Receiver was correct.

Temme's Motion boils down to a request to remove the Receiver because the Receiver (i) had the temerity to defend himself from repeated assertions he had violated ethical rules, and (ii) attempted to utilize the Federal Rules of Civil Procedure to obtain formal discovery where Temme demonstrated his unwillingness to provide informal cooperation.

The Receiver's estates have limited funds, and the Receiver's ability to locate assets has been hindered by his inability to meaningfully discuss the complicated facts of this case with Temme. The effect of Temme's Motion has been to further delay the Receiver's investigation and location of assets. The Receiver requests the Court deny Temme's Motion and allow the Receiver to effectuate this Court's prior orders.

WHEREFORE, the Receiver respectfully requests that the Court deny the Motion.

Respectfully submitted,

BRYAN CAVE

By: /s/ Jay L. Krystinik
Keith Miles Aurzada
Texas Bar No. 24009880
Jay L. Krystinik
Texas Bar No. 24041279

2200 Ross Avenue, Suite 3300
Dallas, TX 75201
Telephone: 214.721.8041
Facsimile: 214.721.8100
Email: keith.aurzada@bryancave.com
jay.krystinik@bryancave.com

ATTORNEY FOR KEITH MILES AURZADA AS
RECEIVER

CERTIFICATE OF SERVICE

The undersigned hereby states that on the 11th day of November, 2011, a true and correct copy of the above foregoing instrument was served via e-mail through the Court's ECF system to all parties consenting to service through same.

/s/ Jay L. Krystinik
Jay L. Krystinik

EXHIBIT A

Krystinik, Jay

From: John Helms, Jr. [John@northtexasrialawyers.com]
Sent: Friday, November 04, 2011 1:02 PM
To: Krystinik, Jay
Cc: Aurzada, Keith; Reece, David B.
Subject: RE: Fwd: Contact with Mr Temme

The basis is the court's inherent power to oversee receivers he appoints. Mr. Temme is a defendant in a criminal investigation. The receiver has refused to contact Mr. Temme's counsel before communicating with him, refused to acknowledge Mr. Temme's right to have counsel present during any interview, and instead of simply offering the courtesy of contacting counsel and reasonable scheduling accommodation, threatened him with a deposition which the Receiver has to know will have severe consequences for Mr. Temme at this stage. The receiver's counsel then threatened by email that Mr. Temme's assertion of his rights today "apparently" (lawyer speak) constitutes lack of cooperation that could allow the receiver to try to take away Mr. Temme's ability to earn a living and to pay for a lawyer. The Receiver and his counsel have acted in a heavy-handed manner, made threats, and trivialized Mr. Temme's right to counsel—all apparently to intimidate and show everyone who is boss. Receivers and their lawyers should not act this way. The Court has equitable power to replace the Receiver for any reason. These are good reasons. I don't have to show a violation of the Texas ethical rules.

John Helms
214.800.2054 (direct)
john@northtexasrialawyers.com



Attorneys & Counselors

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From: Krystinik, Jay [mailto:Jay.Krystinik@BryanCave.com]
Sent: Friday, November 04, 2011 12:55 PM
To: John Helms, Jr.
Cc: Aurzada, Keith; Reece, David B.
Subject: RE: Fwd: Contact with Mr Temme

We are unaware of any basis for your motion. Again, can you please provide authority supporting your assertions so we can meaningfully confer? We are opposed to your motion, but are willing to appropriately confer as required by local rules.

Please also be advised that the receiver is already set for hearing before Judge Ferguson in the United States District Court for the Northern District of Texas on Monday, November 7, 2011 at 10:00 a.m., and will be in Delaware on Tuesday. We would ask that no hearing occur any time Monday morning or Tuesday.

Thank you.

Jay L. Krystinik
Associate



JP Morgan Chase Tower | 2200 Ross Avenue | Suite 3300 | Dallas, TX 75201
t: 214.721.8048 | f: 214.220.6748 | e: jay.krystinik@bryancave.com

From: John Helms, Jr. [mailto:John@northtexasrialawyers.com]
Sent: Friday, November 04, 2011 12:22 PM
To: Krystinik, Jay
Cc: Aurzada, Keith; Reece, David B.
Subject: RE: Fwd: Contact with Mr Temme

Jay, please let me know whether you agree with or oppose my motion to replace the receiver.

John Helms
214.800.2054 (direct)
john@northtexasrialawyers.com



Attorneys & Counselors

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From: Krystinik, Jay [mailto:Jay.Krystinik@BryanCave.com]
Sent: Friday, November 04, 2011 11:48 AM
To: John Helms, Jr.
Cc: Aurzada, Keith; Reece, David B.
Subject: RE: Fwd: Contact with Mr Temme

Mr. Helms -

Mr. Aurzada forwarded me your e-mail below. As you are aware from my appearance for Mr. Aurzada in both state and federal court, I represent Mr. Aurzada as his counsel. I am troubled that you would communicate with the Commission and Mr. Aurzada regarding your threat to remove him as receiver without cc'ing me. Going forward, please ensure I am included on any communication from you to Mr. Aurzada.

Next, I was unaware of Mr. Aurzada's contact of Mr. Temme until this morning, and in no way encouraged Mr. Aurzada to do so. Texas Rule of Professional Conduct 4.02 and the comments thereto are abundantly clear that nothing about Mr. Aurzada's contact was improper. Mr. Aurzada, as an officer of the United States District Court, has no client, and was acting in his capacity as the court appointed receiver. If you have any authority to the contrary, please bring it to our attention immediately, as we believe any motion to the court would violate Rule 11. I will also note that on November 2, Mr. Aurzada requested Mr. Temme's contact information in your presence, in the attorney conference room of the 192nd Judicial District Court of Dallas County, Texas. You made no objection to the receiver contacting Mr. Temme directly at any time.

Finally, your assertion that the receiver's request for a deposition is retaliation is spurious. The receiver was willing to informally interview your client, but you have not allowed that to proceed. Additionally, we have requested Mr. Temme's laptop for a week, and you have not turned it over. Mr. Aurzada is simply attempting to discharge his duties, as required by the court's order. Based on Mr. Temme's comments on Wednesday, we understood he was willing to cooperate. We are disappointed that today's events appear to indicate otherwise.

Should you file any motion with the court, please make sure to serve me. Thank you,

Jay L. Krystinik
Associate



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t: 214.721.8048 | f: 214.220.6748 | e: jay.krystinik@bryancave.com

From: John Helms, Jr. <John@northtexasrialawyers.com>
To: David B. Reece <reedec@SEC.GOV>

Cc: Aurzada, Keith
Sent: Fri Nov 04 08:43:35 2011
Subject: Fwd: Contact with Mr Temme

David, I will be filing an emergency motion to have Mr Aurzada removed as receiver. See below. He has violated the ethical rules against contacting a represented person, insisted that the ethical rules do not apply to him, threatened retaliation, and acted unprofessionally. The emails tell the story. Please let me know if you oppose this motion.

Sent from my iPhone

Begin forwarded message:

From: "John Helms, Jr." <John@northtexastrialawyers.com>
Date: November 4, 2011 7:37:58 AM CDT
To: "Aurzada, Keith" <Keith.Aurzada@BryanCave.com>
Cc: "Krystinik, Jay" <Jay.Krystinik@BryanCave.com>
Subject: Re: Contact with Mr Temme

I will be filing a written motion this morning to have you removed as receiver. I will ask for emergency relief and a hearing in person before Judge Mazzant. Please let me know if you oppose.

Sent from my iPhone

On Nov 4, 2011, at 7:29 AM, "Aurzada, Keith" <Keith.Aurzada@BryanCave.com> wrote:

Please give me dates next week for your client to testify at a deposition.

Keith Miles Aurzada
Bryan Cave LLP
2200 Ross Avenue
Suite 3300
Dallas, TX 75201
214.721.8041 telephone
214.498.4278 mobile

----- Original Message -----

From: John Helms, Jr. <John@northtexastrialawyers.com>
To: Aurzada, Keith
Cc: Krystinik, Jay
Sent: Fri Nov 04 08:18:16 2011
Subject: Re: Contact with Mr Temme

I do not agree. There is no exception to the ethical rules for receivers. You are a lawyer, and the rules apply to you. I expect you to follow the ethical rules that govern our profession.

Please let me know if we need to go to the court about this. Mr Temme is not going to meet with you until this issue is resolved.

Sent from my iPhone

On Nov 4, 2011, at 6:35 AM, "Aurzada, Keith" <Keith.Aurzada@BryanCave.com> wrote:

Mr. Helms,

I contacted Mr. Temme in my capacity as receiver and without counsel involved.

It is my expectation that this is not a violation of any ethical rule or the receivership order. Please confirm that you agree. Obviously, if we were to take testimony or otherwise ask Mr. Temme to sign documents that would be different.

In the meantime, Mr. Temme is to meet me at my office at 11:00 a.m. this morning at my offices to turn over his computer and to discuss this matter generally. You are welcome to attend.

Keith

Keith Miles Aurzada

Bryan Cave LLP

JP Morgan Chase Tower | 2200 Ross Avenue | Suite 3300 | Dallas, TX 75201

t: 214.721.8041 | f: 214.220.6716 | c: 214.498.4278

keith.aurzada@bryancave.com

-----Original Message-----

From: John Helms, Jr. [mailto:John@northtexasrialawyers.com]

Sent: Friday, November 04, 2011 5:32 AM

To: Krystinik, Jay

Cc: Aurzada, Keith

Subject: Contact with Mr Temme

Mr. Temme informed me that one of you contacted him directly yesterday. As you know, I represent him. Nothing in his agreement vitiates the rule that a lawyer may not contact a represented person directly. At least for now, please contact me instead of contacting him directly. I would be glad to help you.

Sent from my iPhone

On Nov 2, 2011, at 11:19 AM, "Krystinik, Jay" <Jay.Krystinik@BryanCave.com> wrote:

John -

For your records, attached please find a copy of the stock certificate Mr. Temme provided to me today. It is for approximately 17.8 million shares of Halo Companies. Thank you,

Jay L. Krystinik

Associate

[\[http://www.ecave.net/marketing/signs/WDC901/bc.jpg\]](http://www.ecave.net/marketing/signs/WDC901/bc.jpg)

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jay.krystinik@bryancave.com <<mailto:jay.krystinik@bryancave.com>>

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bcllp2011

<bc.jpg>

<Halo stock certificate.PDF>