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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs. Civil Action No. 4:11-CV-00655

JAMES G. TEMME,
STEWARDSHIP FUNDS, LP

Defendants.

MOTION FOR LEAVE TO FILE POST-HEARING BRIEF

Non-parties to this action, MDA Realty Holdings, LLC, MVB Realty Holdings, LLC, LF Realty Holdings, LLC and F & B Note Holding, LLC (collectively, the "Finch and Barry Group"), file this Motion For Leave to File the attached Post-Hearing Brief, and would respectfully show the Court the following:

1. The Court invested a good deal of time in allowing the Finch and Barry Group to present their Amended Motion to Lift Stay, and hearing the arguments in opposition. The hearing went a completely different direction than could have been anticipated by the Finch and Barry Group, based upon the Receiver's last minute decision (less than 24 hours before the hearing) to object to the Finch and Barry Group's bringing their damage claims against the HS Affiliates, and the Receiver's new claims of possible "ownership" of the Finch and Barry Group's claims for fraud, civil theft and negligence.

2. In addition, the Receiver made the unexpected announcement at the hearing that he was still considering bringing an action directly against the Home Solutions Affiliates, apparently based upon the Finch and Barry Group's claims. There

was not sufficient time on the clock at the hearing for these statements to be examined and analyzed. The fact of the matter is that the Receiver has no standing to bring the Finch and Barry Group's claims, the Receiver has settled away part of any claims that he has against the HS Affiliates, and the Receivership Estate did not suffer the same loss as the Finch and Barry Group. These facts are easily demonstrated in the attached Post- Hearing Brief, which has as its main purpose an explanation of how the Receiver is barred legally and pragmatically from bringing these claims against the HS Affiliates.

3. The Finch and Barry Group begs the Court's one last indulgence to examine briefly the ability of the Receiver to bring any of these claims, and whether he would have the right and ability to do so. In order that the Court will be able to examine these new and unanticipated allegations and statements by the Receiver, the Court is urged to consider the short attached brief, so that justice may be done and so that the Court's decision on this matter of such critical importance to this entire civil action, can be based upon all the relevant facts and considerations, presented by all the parties.

4. Naturally, should the Court allow the filing of this Post-Hearing Brief, any party opposing the request of the Finch and Barry Group should have time to respond to same. Therefore, the proposed Order which accompanies this Motion for Leave sets forth a time for any party wishing to respond to the brief to file a written response. The Finch and Barry Group is more than agreeable with the Court's decision on this important Amended Motion to Lift Stay being delayed for two to three weeks, so that all parties can have their final say on this matter of such obvious importance.

WHEREFORE, the Finch and Barry Group respectfully requests that the Court allow the filing of this Post-Hearing Brief and enter the Order submitted herewith,

allowing not only the filing of that Brief, but the filing of any response to same by any party wishing to respond, by a time established by the Court, and that the Finch and Barry Group obtain such other and further relief as they show themselves justly entitled in this regard.

Respectfully submitted,

PENNINGTON HILL, LLP.

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CERTIFICATE OF CONFERENCE

This is to certify that I have complied with the meet and confer requirement in Local Rule CV-7(h). I attempted to contact Mr. Mike Donley and Mr. Jay Krystinik on September 3, 2012. My partner, Matthew Germany, conferred with Mike Donley, counsel for the Home Solutions Partners entities, on September 4, 2012 via phone. He is opposed to the motion at this time. Mr. Germany conferred with Mr. Jay Krystinik, counsel for the Receiver, and he is not opposed to the Motion. Movants believe the Court thoroughly understands the pending issues and is prepared to make a ruling, necessitating the filing of this Motion for Leave and Post-Hearing Brief immediately to clarify the remaining open issues for the Court to resolve. Therefore, this matter is submitted to the Court for determination.

/s/ H. Allen Pennington, Jr.
H. Allen Pennington, Jr.

CERTIFICATE OF SERVICE

I certify that on September 4, 2012, a true and correct copy of the foregoing document was served on the following counsel of record via electronic case filing or certified mail, return receipt requested.

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Defendants.

POST-HEARING BRIEF OF THE FINCH AND BARRY GROUP

MDA Realty Holdings, LLC, MVB Realty Holdings, LLC, LF Realty Holdings, LLC and F & B Note Holdings, LLC (collectively, the "Finch and Barry" or "F & B Group"), file this their Post-Hearing Brief in support of their Amended Motion for Leave, and would respectfully show the Court the following:

Introduction

It appeared at the hearing that the Home Solutions Affiliates and the Receiver are now arguing that the claims outlined in the Amended Motion to Lift Stay "belong" to the receivership estate. The question of how the Receiver could prosecute F & B's claims was never answered. As shown herein, the Receiver does not own and could not prosecute such claims.

First and foremost, the subject claims are personal fraud and theft claims, belonging solely to the F & B Group. The F & B Group has not assigned these or any other claims to the Receiver. The Receiver never explained how the F & B Group could sue for the mortgages, but not for recovery of the money used to pay for the mortgages. The Receiver has no standing and no basis for suing the HS Affiliates for the $3.1mm

which the F & B Group lost. The claim for that money, in favor of the F & B Group, came into existence at the instant F & B Group's money touched the bank account of Home Solutions Partners I, LP, before someone moved that money to the Destiny II bank account.

Analysis of Monetary Portion Of The Claim

Let's look deeper (than we were able to at the hearing) into whether the Receiver could sue the HS Affiliates for any of the $3.1mm which F & B wired to the Comerica account of Home Solutions Partners I on April 21, 2011. As shown by the Affidavit of Jacob Fain (Exhibit 10 at the hearing), and apparently uncontested by any party, the same amount ($3,139, 667.00) was moved from the HSP I account by someone, the same day, to the basically empty Destiny II account, at the Comerica bank. That same day, $211,785.00 was wired to an empty account of Harbour Portfolio I, LLC, and $183,670.00 to an empty account of Harbour Portfolio II, LLC, also at the same bank.[1] A few days, later $1,821,306.00 was wired from the Destiny II account to Home Solutions Partners III, LP. The balance stayed in the Destiny II Account, which went to other recipients.

[1] These two wire transfers are urged by the HS Affiliates to be legitimate transactions, paying them money to which they were entitled, despite the fact that these were also dormant accounts, at the same bank, also bearing Jay Temme's office address, and over which Temme had signature authority. They are identical to the account into which the $3.1mm was wired. Though, the HS Affiliates claim they didn't know for months about the $3.1mm transferred into the HSP I account at Comerica on April 27, 2011, they apparently were watching the identically patterned Harbour Portfolio I and II accounts at Comerica a little more attentively – they removed these funds from these two accounts to some other bank the very same day – April 27, 2011.

Therefore, the $3.1mm that originally went to the Home Solutions Partners I account, and only secondarily went into the Destiny II account, landed as follows:

Harbour Portfolio I, LLC	$211,785.00
Harbour Portfolio II, LLC	$183,670.00
Home Solutions Partners III, LP	$1,821,306.00
Kept by Destiny II	$922,906.00
Total	$3,139,667.00

Of these amounts, totaling over $3.1mm, for what could the Receiver sue the HS Affiliates? Not the $922,906.00, because the Receivership Entities didn't lose that money, they kept it. This fact alone distinguishes F & B's claim from any claim the Receiver would try to make; the F & B Group suffered the entire $3.1mm loss from its interaction with the HS Affiliates, not that amount, less $922,906.00..

The Receiver released any claims he had against Harbour Portfolio I and II in settlements which were vigorously opposed by the F & B Group. So the Receiver can't sue for those amounts either; the F & B Group can.

Finally, the $1,821,306.00 amount. The Receiver's counsel says there has been no release of that amount, but, as a practical matter, the Securities & Exchange Commission has clearly foreclosed a direct action against the HS Affiliates by the receivership estate for that amount. Regarding the transaction with the F & B Group as a whole, the SEC makes the following judicial admissions in its Complaint originally filed in this federal court action:

1. that the "purchase agreement (Exhibit 3 at the hearing) is a fraud;" (SEC Complaint, para. 38)
2. that the "President's purported signature on the document was a forgery;" (SEC Complaint, para. 42)
3. that the "$3.1 million capital contribution was not used to obtain the Equitas Mortgages;" (SEC Complaint, para. 40)
4. that "neither HS Partners I, LP nor its general partner had authorized Temme to use the [bank] account for the business unrelated to his service contract;" (SEC Complaint, para. 48)
5. that "in fact, HS Affiliates' President [Vose] knew nothing about the purported transfer of the Equitas Mortgages;" (SEC Complaint, para. 42)[2]
6. that "in December 2009, Temme and Stewardship had agreed to sell certain foreclosed homes to another Home Solutions partnership in exchange for $1,562,875. After the partnership had funded the agreement, there was a long delay during which Temme failed to provide the partnership with the deeds confirming that the titles to the properties was never conveyed to the partnership. According to HSA's President, title to those properties was never conveyed to the partnership. Accordingly, the partnership demanded that Temme repay the purchase price, plus certain additional costs that had been incurred. In May 2011,

[2] These last two critical allegations in the SEC's Complaint are not supported by any statements in the October 10, 2011 Declaration of Charles A. Vose III, or any other evidence attached to the SEC's Complaint. As pointed out at the hearings in this matter, Vose has never sworn under oath that he did not know about the transaction with the F & B Group, and in his 2011 declaration tellingly says that when he confronted Temme, he could not "explain exactly why the relevant Home Solutions Partnerships had not been paid." The evidence at Thursday's hearing indicates that Home Solutions Partners I was paid in full for the mortgages in any event.

Temme paid the partnership $1,821,306, representing the paid purchase price, plus compensation for the costs the partnership had occurred." (SEC Complaint, para. 51) (emphasis supplied).

7. that "the funds Temme used to fund this approximately $1.8 million payment were wired from the same Destiny Fund II Comerica account to which Temme had transferred the Equitas Investors' approximately $3.1 million capital contribution." (SEC Complaint, para. 52).

Thus, the SEC, in its Complaint, completely admits away any claim the Receiver might have against the HS Affiliates for the $1,821,306.00 amount, formally takes the position that it was payment for an antecedent debt, and further concedes that there was no wrongdoing or even knowledge of the transaction on the part of Mr. Vose and the HS Affiliates, a matter which Jay Temme will ultimately challenge, according to his attorney at the hearing. Any lawsuit by the Receiver for recovery of the $1.8mm against the HS Affiliates would not be worth the paper it was written upon, based upon the SEC's judicial admissions of the HS Affiliates' complete innocence in, and even lack of knowledge of, the F & B transaction. All this, despite the clever statement in Mr. Vose's October 10, 2011 declaration to the Court that he confronted Temme about why he hadn't been "paid" for the mortgages, not that he didn't know Temme had sold them; and not that Temme didn't have the authority to sell them.

Therefore, the Receiver's alleged potential claims against the HS Affiliates for the $3.1mm that went to the Destiny II Comerica account break down as follows:

Harbour Portfolio I, LLC	$211,785.00	Released by Receiver
Harbour Portfolio II, LLC	$183,670.00	Released by Receiver
Home Solutions Partners III, LP	$1,821,306.00	Judicially Admitted Away by SEC
Kept by Destiny II	$922,906.00	No loss
Total	$3,139,667.00	

There is also, of course, the obvious alignment between the Receiver and the HS Affiliates, that even the Receiver felt compelled to comment upon in his recent oral report to the Court. The Receiver has completely sided with the HS Affiliates on every issue, which anyone argues, rightly or wrongly would affect or involve the Finch & Barry Group. The Receiver even now sponsors the HS Affiliates as "innocent investors" in the Stewardship Fund, though the evidence now in the record from Doug Furra makes it clear that there was anything but a disinterested investor relationship between these parties.

The Receiver Has Known of F & B's Claims From Day One

As a general observation, the basic facts and evidence set out at the hearing last Thursday, most of which were challenged by the Receiver's attorney at the hearing, can almost all be gleaned from the face of the SEC complaint filed in October, 2011. The F & B Group's claims against the HS Affiliates are also spelled out right in the SEC Complaint. Counsel for the F & B Group first conferenced with the Receiver on a Motion to Lift Stay months ago; the Receiver said, among other things, that he would appreciate it if the undersigned counsel would wait a while to file the Motion to Lift Stay, and then, the Receiver filed a Motion to Approve Settlement with the Vose Parties, sponsoring a global release of Charles Vose and all "affiliates" of both Charles Vose

and Harbour Portfolio I and II. No notice of this Motion was provided to the F & B Group or any other investor, and the undersigned counsel found out about it completely by accident.[3] The Receiver's alleged "claims" against Harbour I and II, based upon the above April 27, 2011 payments of almost $400,000.00, are not even mentioned in the Motion as being part of the global settlement with these two entities.

The Receiver then filed a Response to the Amended Motion for Relief from Stay, not objecting to the assertion of F & B's damage claims, and then, less than 24 hours before the hearing, changed his mind and said he opposes the whole thing, and now claims "ownership" of the F & B Group's fraud, theft and negligence claims.[4]

In sum, the Receiver is judicially estopped from suing the HS Affiliates, has never taken a single position adverse to the HS Affiliates, has clearly been aligned in all respects with the HS Affiliates to the present, and in a word, is clearly not going to sue any of the HS Affiliates. This Court should decline the give the Receiver "time" to consider whether to bring the F & B Claims. The Receiver has already declared in this Court that each of the HS Affiliates are "net losers" in their dealings with Stewardship, that he therefore cannot sue these parties, and sponsored Vose's May 23, 2012 Affidavit in support of that conclusion.[5]

[3] To the Receiver's credit, notice of the most recent proposed settlements was provided to the investors. The result has been universal objection to the proposed new deals.

[4] At the risk of being cynical, but perhaps what will ultimately be proof of the axiom that "just because you're paranoid doesn't mean they're not out to get you," the undersigned respectfully submits that the more likely scenario is, and the pattern would be, the presentation to the Court of yet another sweetheart settlement deal, this time between the Receiver and the Home Solutions Partners partnerships, their officers, managers and employees; thus giving the HS Affiliates the argument (which they presented at the hearing) that the F & B claims which are the subject to the Amended Motion to Stay have now been released.

[5] In perhaps the most obvious example of alignment, the Receiver declared to this Court that the HS Affiliates are all "net losers" in their dealings with Stewardship Fund, based upon Mr. Vose's May 23, 2012 Affidavit, which states that the companies "collectively" lost money. Having used that affidavit with such aplomb in the Motion to Approve Settlement with the Vose Parties, the HS Affiliates now contend

Tendered with this Motion is a modified proposed order on the Amended Motion to Lift Stay. The earlier one provided inadvertently omitted F & B Note Holding, LLC, one of the named Movants. In addition, this new proposed order specifically describes the claims which are not in violation of the stay, to attempt to meet the overbreadth argument urged at the hearing.

The Merits of The Claims Are Not At Issue

Finally, a lot of time was spent at the hearing trying to challenge the facts upon which the F & B Group Claims were based, and perhaps this was just a natural response to the facts presented, by very skilled trial lawyers doing their best to represent their clients. At the risk of stating the obvious, the merits of the claims, and even the weight of the evidence in support of those claims, has absolutely nothing to do with the scope of the stay in this matter, the ownership of the subject claims and F & B's right to bring its own claims against non-parties to this matter. The merits of the claims should be decided by a jury at the appropriate time.

The Court is urged to grant the Amended Motion to Lift Stay, using the attached Order. The F & B Group very much appreciates the Court's patience and time invested in this matter, which is of great importance to all involved.

WHEREFORE, the Finch and Barry Group respectfully prays that this Court enter its order declaring that the claims set forth in their Amended Motion against the respective Home Solutions Affiliates are not governed by any stay in this action, or in the alternative, enter its order lifting or modifying the stay orders of this Court to allow the prosecution of such claims in the forum of its choice, and that the F & B Group

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their companies are not affiliated at all, making any "collective net loser" status completely irrelevant. See page 1 of the HS Affiliates' Response to the Amended Motion to Lift Stay.

obtain such other and further relief in this regard as they show themselves justly entitled.

Respectfully submitted,

PENNINGTON HILL, LLP.

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CERTIFICATE OF SERVICE

I certify that on September 4, 2012, a true and correct copy of the foregoing document was served on the following counsel of record via electronic case filing or certified mail, return receipt requested.

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STEWARDSHIP FUNDS, LP

Defendants.

ORDER

The Court has considered the Motion for Leave to File a Post-Hearing Brief by the Finch and Barry Group. After considering same, it is of the Court's opinion that leave should be granted to file the Brief, and that any parties opposing the F & B Group's Amended Motion to Lift Stay should be allowed to file a response to same.

It is therefore ORDERED that the Motion For Leave to File the Post Hearing Brief is hereby Granted, and the Court shall receive same for filing at this time, and that any party opposing the Finch and Barry Group's Amended Motion to Lift Stay shall file a response to such brief of the F & B Group within _____ days of the date of this Order.