

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

JAMES G. TEMME and  
STEWARDSHIP FUND, LP,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 4:11-CV-00655

**JOINT RESPONSE TO FINCH AND BARRY GROUP'S  
MOTION FOR CLARIFICATION**

The Home Solutions, Harbour Portfolio and Cavco Entities<sup>1</sup> (“Respondents”) jointly file this Response (“Response”) to the Finch and Barry Group’s (“F&B Group” or “Movants”) Motion for Clarification (“Motion”) (Dkt. #141). The Finch and Barry Group requests an order limiting and “clarifying” the Court’s Order of September 13, 2012 (the “September 13 Order” or the “Order”). The F&B Group requests a new order interpreting the September 13 Order on these three issues:

1. The Order is not intended to adjudicate the merits of the F&B Group’s purported claims against the “Home Solutions Affiliates”.
2. The Order is not intended to adjudicate final ownership of the F&B Group’s purported tort or contract claims.
3. The Order is “without prejudice” to the F&B Group’s “right” to make further requests that the stay in this case be lifted.

The F&B Group’s Motion for Clarification should be denied because the requested interpretations seek to “clarify” issues that were not before the Court.

---

<sup>1</sup> Respondents are: (1) Home Solutions Advisors, LLC; Home Solutions GP, LP; Home Solutions Partners I, LP; Home Solutions Partners II, LP; Home Solutions Partners III, LP; Harbour Portfolio I, LLC; Harbour Portfolio II, LLC; and Cavco Holdings, LLC. Respondents are not “Affiliates” as the F&B Group again asserts without support.

**A. The F&B Group's Requested Interpretations seek to "clarify" issues that were not before the Court.**

1. The requested interpretation regarding "adjudicating the merits" is improper.

With regard to the F&B Group's first requested interpretation, no party or nonparty requested that the Court "adjudicate" the F&B Group's purported claims. The Court properly evaluated the merits of the F&B Group's purported claims in denying the relief the F&B Group requested. *See* Order at 6-9 *see also S.E.C. v. Wencke*, 622 F.2d 1363, 1373 (9th Cir. 1980) ("The merit of the moving party's claim is also a relevant consideration."). Additionally, it is clear from the evidence presented and the September 13 Order that the F&B Group has not presented any evidence that it has *any* claim against Respondents. *See, e.g.*, Respondents' Joint Response to the F&B Group's Motion for Reconsideration (filed contemporaneously and incorporated as if fully stated herein). But, given the issue was not before the Court, it would be improper to grant the F&B Group's Motion for an interpretation regarding "adjudicating" the merits of the F&B Group's claims.

2. The requested interpretation regarding "final ownership" is improper.

With regard to the F&B Group's second requested interpretation, again, no party or nonparty requested that the Court adjudicate the "final ownership" of the F&B Group's purported claims. It is clear from the evidence presented and the September 13 Order that: (1) no member of the F&B Group has ever spoken to Respondents; (2) Respondents were not even aware of the relevant transaction; (3) James Temme designed and executed the transaction that harmed the F&B Group; (4) 48th Street Holdings, LLC, the only party that can claim damages, is not before the Court; (5) Respondents never, even collectively, owned the 440 Subject Mortgages that form the basis of the F&B Group transaction; and (6) the F&B Group failed to do even the most basic due diligence in its dealings with Temme. Therefore, it is equally clear that

any claim the F&B Group could bring would be frivolous. And, the Court properly evaluated the merits of the F&B Group's purported claims in denying the relief the F&B Group requested. *See, e.g., Wencke*, 622 F.2d at 1373. However, given that the issue of "final ownership" was also not before the Court, it would be improper to grant the F&B Group's second interpretation.

3. The requested interpretation regarding future judicial process is improper.

With regard to the F&B Group's third requested interpretation, Respondents have repeatedly explained the tremendous waste of resources that the F&B Group has caused during its numerous attempts to harass Respondents. *See, e.g., Joint Response in Opposition to the F&B Group's Motion to File Post-Hearing Brief (Dkt. #130)*(describing the more than dozen attempts by the F&B Group to harass Respondents). But, because it would amount to an advisory opinion and because the issue was not before the Court, it would be improper to grant the F&B Group's requested interpretation regarding future judicial process.

**CONCLUSION**

For the reasons described herein, Respondents respectfully request that the Court deny the F&B Group's Motion and grant Respondents any and all relief to which they are justly entitled.

DATE: October 04, 2012.

Respectfully submitted,

LOEWINSOHN FLEGLE DEARY, LLP

/s/ Jim L. Flegle

JIM L. FLEGLE

Texas Bar No. 07118600

MICHAEL J. DONLEY

Texas Bar No. 24045795

12377 Merit Drive, Suite 900

Dallas, Texas 75251

(214) 572-1700

(214) 572-1717 (fax)

**ATTORNEYS FOR RESPONDENTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above pleading was served on the parties identified below on October 04, 2012:

H. Allen Pennington, Jr. *Via ECF and Facsimile*  
Jacob T. Fain  
Pennington Hill, LLP  
509 Pecan Street, Suite 101  
Fort Worth, Texas 76012  
Fax – 817-488-4545

Bradley J. Purcell *Via ECF*  
Jay L. Krystinik  
Bryan Cave, LLP  
JP Morgan Chase Tower  
2200 Ross Avenue, Suite 3300  
Dallas, Texas 75201

David B. Reece *Via ECF*  
Securities and Exchange Commission  
Fort Worth Regional Office  
801 Cherry Street, 19<sup>th</sup> Floor  
Fort Worth, Texas 76102

John Helms *Via ECF*  
Helms Roberts & Diaz  
6060 N. Central Expressway, Suite 560  
Dallas, Texas 75206

Michael Quilling *Via ECF*  
Quilling, Selander, *et al.*  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201

/s/ Michael J. Donley  
Michael J. Donley

