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

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

RESPONSE OPPOSED TO MOTION FOR RECONSIDERATION OF MAGISTRATE'S ORDER, MOTION FOR ORAL HEARING THEREON
[Regarding Docket No. 142]

COMES NOW, Keith M. Aurzada, as receiver in the above-captioned matter (the "Receiver") for James G. Temme ("Temme"), Stewardship Fund, LP, and all other entities directly or indirectly controlled by Temme or Stewardship Fund, LP, including, but not limited to Stewardship Advisors, LLC, d/b/a Stewardship Advisors, LP, Stewardship Asset Management Genpar I, LLC, Stewardship Group, LLC, Destiny Fund, LP, and Stewardship Management, LP (collectively, the "Receivership Entities"), and submits this Response Opposed to Motion for Reconsideration of Magistrate's Order and Motion for Oral Hearing Thereon (Docket No. 142) (the "Motion"), filed by MDA Realty Holdings, LLC, MVB Realty Holdings, LLC, LF Realty Holdings, LLC and F & B Note Holding, LLC (collectively, the "F&B Group"). In support of this Response, the Receiver would respectfully show the Court as follows:

I.
ARGUMENT AND AUTHORITIES

1. In their Motion, the F&B Group fails to present any reason for reconsideration of Judge Mazzant's Order Denying Lifting Stay (Docket No. 135) (the "Order"). Rather, the F&B

Group simply seeks another bite at the apple to relitigate a matter correctly decided by Judge Mazzant.

2. Judge Mazzant correctly set forth the three-part test courts apply when determining whether to lift a litigation stay: (1) Whether refusing to lift the injunction genuinely preserves the status quo or whether the moving party will suffer substantial injury if it is not permitted to proceed; (2) The time in the course of the receivership at which the motion for relief from the injunction is made; and (3) The merits of the moving party's underlying claim. *SEC v. Wencke*, 622 F.2d 1363, 1373-74 (9th Cir. 1980) (establishing balancing test); *United States v. Acorn Tech. Fund, L.P.*, 429 F.3d 438, 444 (3d Cir. 2005). F&B Group had the burden of proving that the balance of these factors weighs in favor of lifting the stay. *Acorn*, 429 F.3d at 450. Each of the factors weighs in favor of maintaining the stay.

3. Because Judge Mazzant correctly applied the applicable law to the facts of this case, the Motion should be denied.

A. Refusing to lift the injunction genuinely preserves the status quo and F&B Group failed to show that they will suffer substantial injury

4. In their Motion, the F&B Group largely ignores both *Wencke* and its progeny from the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit analyzed a similar request for relief from a litigation stay in *S.E.C. v. Stanford Intern. Bank Ltd.*, 424 Fed. Appx. 338, 341-342 (5th Cir. May 05, 2011).[1] In that case, certain investors sought to bring direct claims against their financial advisors (who directed investments to receivership entities). *Id.* In affirming the decision of the district court to deny a request for relief of the litigation stay, the Fifth Circuit noted the following (all of which are relevant here):

[1] The Fifth Circuit also affirmed the continuation of a litigation stay in *S.E.C. v. Stanford Intern. Bank Ltd.*, 429 Fed. Appx. 379 (5th Cir. June 20, 2011).

- The financial advisors at issue were, in many cases, parties to ancillary litigation already initiated by the Receiver, and recovery against one of them could deplete possible assets coming into the estate. *Id.* at 341.
    - Here, the F&B Group's efforts to pursue certain of the Affiliates (as defined in the Motion) is interfering with the Receiver's efforts to obtain settlements with those same entities.
- "[R]ecovery against the financial advisors at issue could deplete the estate." *Id.* at 341.
    - Here, any recovery from the Affiliates by the F&B Group could reduce recovery by the estate due to the one-satisfaction rule.
- "The District Court found it highly likely that the financial advisors would argue as a defense that the Stanford companies were at least partially responsible for the investors' losses." *Id.*
    - Here, the overwhelming evidence was that the perpetrator of the conduct alleged by the F&B Group was Temme and certain Receivership Entities. The F&B Group conceded they never had direct communications with the Affiliates. The Affiliates will likely claim the conduct of Temme and certain of the Receivership Entities acts as a defense to claims asserted by the F&B Group.
- "The District Court found that the Receiver's ongoing duty to monitor and possibly intervene in ancillary actions would cost the estate in money and efficiency." *Id.*
    - Here, if the F&B Group were granted leave to sue the Affiliates in state court, the Receiver would feel compelled to intervene. Texas Rule of Civil Procedure 39 provides that a party should be added if, among other things, that party's absence would "leave any of the persons already parties subject to a substantial risk of

incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest." TEX. R. CIV. P. 39(a)(2)(ii). Obviously, intervention would be necessary to ensure the maximum recovery for the estate. Such intervention would cost the estate in money and efficiency.

5. As they did before Judge Mazzant, the F&B Group also continues to argue for the application of inapplicable Sixth Circuit law. *See* Motion, at pp. 10-13. Essentially, the F&B Group argues that the stay should not apply because the Receiver cannot assert claims that would otherwise belong to creditors. The F&B Group ignores that Fifth Circuit law has repeatedly held that a receiver stands in the shoes not only of the entities over whom he is the receiver, but also in the shoes of defrauded investors and creditors. *See, e.g.*, *Janvey v. Alguire*, 647 F.3d 585, 598 (5th Cir. 2011) (affirming finding that receiver had shown substantial likelihood of success on merits of receiver's claims under Texas Uniform Fraudulent Transfer Act); *Janvey v. Democratic Senatorial Campaign Comm.*, 793 F.Supp.2d 825, 857 (N.D. Tex. 2011) (allowing receiver to pursue claims on behalf of creditors under Texas Uniform Fraudulent Transfer Act); *Ogle v. Bennett*, 2012 WL 2567139 at *2-*3 (rejecting contention that receiver does not stand in shoes of creditor and holding that receiver has standing to assert fraudulent transfer claim) (citing *Meyers v. Moody*, 693 F.2d 1196, 1206 (5th Cir. 1982)).

6. There is no doubt that maintaining the litigation stay simply maintains the status quo and protects the receivership estate. The F&B Group has failed to establish any substantial harm that would justify preferential treatment and lifting the stay.

7. Because Judge Mazzant correctly applied applicable law, the Court should deny the F&B Group's Motion.

B. The receivership is in its early stages

8. Judge Mazzant correctly concluded that the receivership is in its early stages. Notably, at this stage in the proceedings, the Receiver is attempting to maximize value for all investors by liquidating assets (including interests in residential mortgages) that the Receiver believes are declining in value. As set forth above, if the F&B Group were granted leave to sue the Affiliates in Texas court, the Receiver would feel compelled to intervene under Texas Rule of Civil Procedure 39 to ensure the maximum recovery for the estate. Such intervention would cost the estate in money and efficiency at a time when the Receiver is trying to maximize sale proceeds. Judge Mazzant correctly concluded that the receivership is in its early stages.

C. The merits of the F&B Group's claims are weak

9. Judge Mazzant also correctly concluded that any claims against the Affiliates by the F&B Group would be weak. Among other things, (i) the F&B Group admitted they performed minimal due diligence, (ii) the F&B Group admitted they never spoke to any of the Affiliates, and (iii) the F&B Group does not even seek leave to pursue the party with whom they contracted (Home Solutions Partners, LP).

10. Moreover, the factual background behind the F&B Group's purported claims show that they are all part of a transaction (or series of transactions) with Jay Temme and various Receivership Entities, through which Temme and various Receivership Entities allegedly defrauded the F&B Group. If true, this is precisely the type of conduct alleged by the SEC in its complaint that would allow the F&B Group to file a claim with the Receiver. It is not the type of conduct that justifies lifting the stay to provide preferential treatment to the F&B Group.

11. Because all three *Wencke* factors weigh heavily against lifting the litigation stay, Judge Mazzant's Order is correct and the Motion should be denied.

II.
RESPONSE TO REQUEST FOR ORAL ARGUMENT AND TO "TABLE" MOTION

12. No oral hearing is necessary. The parties already spent hours arguing this hearing, and at the prior hearing the F&B Group spent significant time presenting evidence on the merits of its claims. All of the argument and evidence was correctly considered by Judge Mazzant.

13. The Receiver estimates he has spent more time (and attorneys' fees) addressing the F&B Group and their issues than any other discrete issue in this receivership. An additional hearing will serve only to deplete funds that could otherwise be available for distribution to all investors. The F&B Group's request for oral hearing should be denied.

14. Finally, the F&B Group requests that the District Court "table" the Motion until their Motion for Clarification (Docket No. 141) is determined. The Receiver objects to any delay in ruling on the Motion for Reconsideration, which the F&B Group could use as a reason to delay any necessary appeal pursuant to Federal Rule of Appellate Procedure 4(a)(4). The Receiver requests that both the Motion for Clarification and the instant Motion for Reconsideration be denied expeditiously to unnecessarily delay appellate deadlines and estate administration. The Receiver requests prompt resolution so that the Receiver can obtain finality and proceed with maximizing the value of the Receivership Estates. The Receiver believes a resolution between the Affiliates and the Receiver will not occur until this issue is resolved.

III.
PRAYER

WHEREFORE, the Receiver prays that the Court deny the F&B Group's Motion and grant the Receiver such other relief to which he may be entitled.

Dated: October 8, 2012

BRYAN CAVE LLP

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CERTIFICATE OF SERVICE

I certify that on October 8, 2012, I served a true and correct copy of the foregoing pleading by electronic mail through the Court's CM/ECF system to all parties consenting to service through same, including to counsel for the SEC, the Defendants, and the Objectors.

Moreover, the foregoing will be uploaded to www.stewardshipfundreceivership.com

//s// Jay L. Krystinik
Jay L. Krystinik

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FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
vs.	§	Civil Action No. 4:11-CV-00655-MHS
JAMES G. TEMME and STEWARDSHIP FUND, LP,	§	
Defendants.	§	

ORDER DENYING
MOTION FOR RECONSIDERATION OF MAGISTRATE'S ORDER AND MOTION FOR ORAL HEARING THEREON
[Regarding Docket No. 142]

CAME ON FOR CONSIDERATION the Motion for Reconsideration of Magistrate's Order and Motion for Oral Hearing Thereon (Docket No. 142) (the "Motion") filed by MDA Realty Holdings, LLC, MVB Realty Holdings, LLC, LF Realty Holdings, LLC and F & B Note Holding, LLC (collectively, the "Movants"). Having considered the Motion, all responses and objections thereto, and the arguments of counsel for and against the approval of the Motion, the Court finds and concludes that the Motion should be, and hereby is, **DENIED**.

It is SO ORDERED.