

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 TO COMPEL PRODUCTION OF DOCUMENTS
FROM RECEIVER AND BRIEF IN SUPPORT THEREOF**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Nonparties 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 their Motion to Compel Production of Documents in response to First Request for Production to the Receiver and would respectfully show the Court the following:

1. The Finch and Barry Group served its First Request for Production of Documents upon the Receiver, a true and correct copy of which is attached hereto as Exhibit “A” and incorporated by reference, on May 22, 2012. These requests primarily seek the information obtained by the Receiver from the Home Solutions Affiliates, regarding their involvement with Temme and the Stewardship entities. The Request for Production clearly stated that the documents were due within thirty days after service of their request, or at least 48 hours prior to any setting on one or both of the Receiver’s

Motions to Approve Settlement filed on April 25, 2012 or the objections to such motions filed on May 15, 2012.

2. After sending the Request for Production, the undersigned counsel received word from the Receiver's law firm that a confidentiality agreement would be required for the production of some of the documents sought. Counsel for the Finch and Barry Group therefore prepared a proposed confidentiality agreement and forwarded it to Mr. Aurzada, as shown by Exhibit "B" attached hereto and incorporated by reference. The agreement was never returned.

3. In all parties' recognition of this accelerated production date, when the Court set an early hearing on the objections to the Vose settlement agreements for June 6, 2012, counsel for Finch and Barry Group corresponded with counsel for the Receiver and asked for all of the documents requested, as by the correspondence between counsel, namely counsel's June 5, 2012 emails attached hereto as Exhibit "C" and incorporated by reference. Given the shortness of time, the Receiver's attorney stated he was only able to produce some of the documents prior to the hearing, and specifically only those documents the Receiver intended to offer as exhibits at the June 6 hearing. No objection was made at that time to the accelerated response date, and indeed it was professionally recognized by counsel at that time, and documents were produced pursuant to and in recognition of the request.

4. No objection was made in the Receiver's response to the Movant's request for production to the accelerated response date.

5. Counsel for the Finch and Barry Group also sent a letter to counsel for the Receiver on June 11, 2012, attached as Exhibit "D" (and incorporated by reference)

reminding him of the accelerated production date and requesting immediate review of the documents. No response to this letter was received.

6. Now counsel for the Receiver is objecting the production of any documents pursuant to the attached Request for Production for a number of reasons. The effect of the response is to declare that the Receiver is immune from discovery in this civil action, which is not believed to be the case. (See the Receiver's Responses to the Finch and Barry Group's Request for Production of Documents, attached hereto as Exhibit "E" and incorporated by reference.) As the Receiver knows, many of the documents requested are relevant to the hearing on July 11, 2012 with respect to the Finch and Barry Group's Motion for Relief from Stay. Thus, the Receiver is both opposing this Motion, for reasons that have not been revealed, and declining to produce any further documents which could be used by the Movants to support their Motion.

7. The items of the request for production are few in number and carefully worded to request only those items which are relevant and likely to lead to the discovery of admissible evidence in this action at this time. The focus of these materials are the documents obtained by the Receiver and his attorneys from Charles Vose and the Home Solutions and Harbour Portfolio entities, which should have been provided prior to the Court being asked to approve settlements with these parties. Not only the Finch and Barry Group, but the direct investors in the Stewardship entities are certainly entitled to have access to these non-privileged documents. In addition, the Receiver has possession of documents which support the present Motion for Relief from Stay, which the Receiver is opposing. There is certainly no privilege that attaches to any documents which have been obtained by the Receiver from these parties, who are not

currently parties to this proceeding, and all the requested documents are clearly discoverable materials in this cause. Counsel has offered to go to the Receiver's office in Dallas to review responsive documents on several occasions.

WHEREFORE, the Finch and Barry Group requests that the Court compel the Receiver to produce all documents responsive to their Request for Production of Documents dated May 22, 2012, overrule all of the objections and alleged privileges to the items of the request for production, and that they be granted such other and further relief as they show themselves justly entitled in this action.

Respectfully submitted,

PENNINGTON HILL, LLP.

By: /s/ H. Allen Pennington, Jr.
H. Allen Pennington, Jr.
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LLC, MVB REALTY HOLDINGS, LLC, LF
REALTY HOLDINGS, LLC AND F & B NOTE
HOLDING, LLC

CERTIFICATE OF CONFERENCE

This is to certify that on June 21, 2012, I attempted to confer with Mr. Brad Purcell, the counsel who filed the Response, left a message that I wanted to confer on a motion to compel and I never received a return call. Therefore, this Motion is submitted to the Court for determination.

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

CERTIFICATE OF SERVICE

I certify that on June 22, 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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/s/ H. Allen Pennington, Jr.
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