

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-CV-80468-MIDDLEBROOKS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JCS ENTREPRISES, INC. d/b/a JCS
ENTERPRISES SERVICES, INC., T.B.T.I., INC.,
JOSEPH SIGNORE, and PAUL L. SCHUMACK, II,

Defendants.

**RECEIVER'S MOTION TO STAY LAWSUITS PURSUANT TO THE
AMENDED RECEIVERSHIP ORDER AND TO EXPAND SUCH STAY
WITH INCORPORATED MEMORANDUM OF LAW**

James D. Sallah, Esq., not individually, but solely in his capacity as the Receiver (“the Receiver”) for JSC Enterprises, Inc. (“JCS”), T.B.T.I., Inc. (“TBTI”), and My Gee Bo, Inc. (“GeeBo”), their affiliates, subsidiaries, successors and assigns (collectively, the “Receivership Entities” or “Estate”), respectfully seeks an order to stay lawsuits pursuant to the Amended Receivership Order [D.E. 19] and to expand such stay over, and enjoin future legal proceedings against, the individual defendants and certain third-parties.

I. RELEVANT BACKGROUND

On April 7, 2014, the Securities and Exchange Commission (“SEC”) initiated the instant emergency enforcement action alleging that the defendants were engaged in a multi-million dollar Ponzi scheme and that Defendants Signore and Schumack had misappropriated investor funds for their personal use, among other things. In addition to other relief, the SEC sought the appointment of a receiver over “all of the assets, properties, books and records, and other items of JCS and TBTI. in their names or their principals’ name.” [D.E. 19 at p.2]. In granting the SEC’s motion

seeking the appointment of a receiver, on April 7, 2014, the Court issued an Amended Receivership Order (the “Order”) appointing James D. Sallah, Esq. as Receiver over JCS and TBTI. *Id.* On April 14, 2014, on the Receiver’s Motion, this Court expanded the Receivership to include GeeBo.

The Order, among other things, provides as follows:

During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code without prior permission from this Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of JCS or TBTI.

Id. at ¶15. By this Court’s subsequent order expanding the Receivership over GeeBo, such prohibitions would also apply to that entity as well. [D.E. 26].

A. Six Lawsuits Involving the Receivership Entities and/or Individual Defendants

Currently, there are at least six (6) known legal actions pending in various state courts against one or both of the Receivership Entities and/or Defendants Signore and Schumack. Specifically, the pending known lawsuits are listed below as follows:

(1) *Michelle Robinson and Robert Rosa v. T.B.T.I, Inc.*, Case No. 2014CA002931 (Div. AD), pending in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida;

(2) *First Data Merchant Services Corporation v. JCS Enterprises, Inc., Joseph Signore, and Richard Brown*, Case No. 14-006801-CA, pending in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida;

(3) *Herbert Weiss v. JCS Enterprises, Inc. and T.B.T.I, Inc.*, Case No. 2014-CA-001992-O, pending in the Circuit Court of the 9th Judicial Circuit in and for Orange County, Florida;

(4) *Cash Express Services, LLC v. JCS Enterprises, Inc. and T.B.T.I., Inc.*, Case No. 2014-CA-002433 (Div. G), pending in the Circuit Court of the 13th Judicial Circuit in and for Hillsborough County, Florida;

(5) *Joseph Mitchell v. T.B.T.I., Inc. and Paul Schumack*, Case No. 14A-6291, pending in Cobb County, Georgia; and

(6) *Daniel A. Rainville v. T.B.T.I., Inc.*, Case No. 502014CA003708XXXXMB, pending in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida.

Although counsel for the Receiver has filed Notices of the Amended Receivership Order in most of the above-referenced cases, counsel for at least one of the Plaintiffs, First Data Merchant Services Corporation, has expressed that he opposes the stay, and counsel for other Plaintiffs have been non-committal concerning the stay. As explained in more detail below, allowing these actions to go forward, and forcing the Receiver to defend these actions, will disturb the assets of the Receivership Estate and, more significantly, create a potentially inequitable distribution favoring certain investors or trade creditors (who have filed and are prosecuting lawsuits) over others (who have not) in regard to what currently appears to be a limited amount of assets. The Receiver is also aware of several others investors and/or trade creditors who have threatened to initiate additional legal actions.

B. Need to Expand the Stay To Include Individual Defendants and Third-Parties

While paragraph 15 of the Amended Receivership Order is clear, the Receiver seeks to expand the stay order beyond lawsuits merely against the Receivership Entities and to include actions currently against, and enjoin future legal proceedings naming, the individual defendants and certain third-parties. For the reasons set forth below, it is necessary to stay and enjoin lawsuits against Defendants Signore and Schumack, certain third parties, and/or any individual or entity

against whom the Receiver may have claims. This expansion will serve to advance this Court's Order, which prohibits "disturbing the assets or proceeds of the receivership." Significantly, the instant relief will preserve the Receiver's ability to advance and defend claims for the benefit of all creditors.

II. MEMORANDUM OF LAW

A. Federal Precedent Supports a Litigation Stay.

The Court's power to supervise an equity receivership and determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) *rev'd in part on other grounds*, 998 F.2d 922 (11th Cir. 1993). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Id.* at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)). District courts have both the inherent and statutory power in a receivership proceeding to enjoin other actions that may frustrate a Court's ability to resolve the merits of the action, including entry of receivership orders which have stayed, or prohibited legal action until the conclusion of the receivership. Indeed, as the Court stated in *U.S. v. Acorn Tech. Fund, L.P.*:

[T]he purpose of imposing a stay of litigation is clear. A receiver must be given a chance to do the important job of marshaling and untangling a company's assets without being forced into court by every investor or claimant...[Accordingly, a] district court should give appropriately substantial weight to the receiver's need to proceed unhindered by litigation, and the very real danger of litigation expenses diminishing the receivership estate.

429 F.3d 438, 443, 450 (3d Cir. 2005). Moreover, a district court that has appointed a receiver may also stay claims by third parties against not only the receivership entity itself, but also the receivership entity's principals, employees, contractors, agents, professionals, banks, service providers, and any other third parties acting on its behalf. See *Kane v. Rose*, 259 F. App'x 258, 260 n.1 (11th Cir. 2007) (*unpublished*) (staying any claims by third parties that "may diminish or

usurp property of the Receiver or the Receivership Entities including, but not limited to, causes of action that belong to the Receiver or which the Receiver may have standing to bring, or any causes of action that may belong to any investors or any class or group of investors **against the Individual Defendants, the Receivership Entities, their former principals, professionals, banks, brokerage houses, service providers or other third parties**)” (emphasis added); *SEC v. Credit Bancorp, Ltd.*, 93 F. Supp. 2d 475, 476-77 (S.D.N.Y. 2000) (enjoining action filed in another District Court against third parties related to receivership proceeding); *SEC v. Wencke*, 622 F.2d 1363, 1365, 1373 (9th Cir. 1980) (upholding litigation stay that was effective against “all investors, creditors, and other persons” in a SEC receivership proceeding); *see also Sassower v. Abrams*, 833 F. Supp. 253, 262 (S.D.N.Y. 1993) (dismissing complaints filed in violation of litigation injunction pursuant to Federal Rule 12(b)(6)).¹

Such authority to stay or enjoin actions is a function of the equitable powers of a federal district court to fashion equitable remedies based on the necessities of each case. *Wencke*, 622 F.2d at 1371; *see also Acorn Tech.*, 429 F.3d at 442 (recognizing “the inherent power of a District Court to enter a valid stay of litigation effective even against nonparties to the receivership proceeding”). In addition, it is well-settled that a litigation injunction can bar actions against persons who are not named in the receivership enforcement proceeding. For example, in *Acorn Technologies*, the Third Circuit upheld a stay of any litigation that applied, as should be in this case, to not only the receivership entity, but also to the entities’ “past or present officers, directors, managers, agents or general or limited partners.” *Id.* Accordingly, federal precedent supports the instant relief sought here.

¹ This Court can take judicial notice of orders and filings in other cases. *See Young v. City of Augusta*, 59 F.3d 1160, 1167 n.11 (11th Cir. 1995) (stating that courts can take judicial notice of orders, motions, and pleadings from other judicial proceedings).

B. An Expanded Stay is Necessary in the Instant Proceeding.

An expanded stay beyond the Receivership Entities is necessary because the Receiver is entitled, if deemed prudent, to seek claims against: Defendants Signore and Schumack; the Receivership Entities' former officers and directors (including the Individual Defendants' spouses), principals, employees; or other third parties to the extent that such third party action could diminish, usurp, or in any way disturb the assets or proceeds of the Receiver or the Receivership Entities. Receivers often target such individuals and entities to reclaim property for the benefit of defrauded investors as a whole. *See, e.g., Acorn Tech.*, 429 F.3d at 443 (*citing SEC v. Universal Financial*, 760 F.2d 1034, 1038 (9th Cir. 1985)) ("the interests of the Receiver are very broad and include not only the protection of the receivership *res*, but also the protection of defrauded investors and considerations of judicial economy"). One of the main reasons a district court appoints a receiver is to ensure that the assets disputed in litigation are efficiently managed for the benefit of creditors. *See Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006). Indeed, an expanded stay protects against private claims by investors or other third parties (such as the plaintiff investor in the *Mitchell* lawsuit or trade creditors in the *First Data* lawsuit) that may diminish or usurp receivership property.

Assuming *arguendo* that third parties were permitted to obtain judgments or recover funds against Defendants Signore and Schumack, whose assets are frozen under this Court's Order [D.E. 16], there will be significantly fewer funds available for the Receiver to pursue for the potential distribution to other investors via a court-approved claims process. As a result, the Receiver deems it necessary to seek a specific order staying and enjoining cases against Defendants Signore and Schumack; the Receivership Entities' former officers and directors (including the Individual Defendants' spouses), principals, employees; or other third parties to the extent that such third

party action could diminish, usurp, or in any way disturb the assets or proceeds of the Receiver or the Receivership Entities.

By the Receiver's appointment, purported creditors lost their claims, rights, or any other entitlement, contractual or otherwise, to settle past debts, against the Receivership Entities and its former principals, sales representatives, employees, and agents until the close of the Receivership Estate. *See United States v. Arizona Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984) (“[T]he purpose and function of receiverships. . . [is to] suspend **all** creditors’ claims, contractual or otherwise, pending judicial determination of assets, liabilities, and claimant priorities.”) (emphasis added). Indeed, in balancing the equities, independent actions involving the Receivership entities would create an unnecessary increase in the cost of administering the Receivership as a diversion of the Receiver’s attention for maximizing the receivership assets.

If the Court were to open the litigation floodgates and permit an unlimited number of suits involving the Receivership entities, the individual defendants, and certain third parties, the Receiver would be forced to use the receivership assets for litigation costs, expenses, and attorney’s fees. Stated differently, with allegedly hundreds of investors and creditors each filing separate actions against the Receivership entities, the individual defendants, and certain third parties, the receivership assets undoubtedly would be drained litigating and settling endless lawsuits. *See Liberte Capital Group*, 462 F.3d 543, 551 (6th Cir. 2006) (stating “[t]he receivership court has a valid interest in . . . the costs of defending any suit as a drain on receivership assets”).

C. It Does Not Matter that Certain Lawsuits were Filed in State Courts.

Any argument that that the pending lawsuits identified above should continue to proceed because they were filed in state court, or outside of this District, are unavailing and wholly misplaced. This Court has the power to stay the pending lawsuits under the All Writs Act, 28 U.S.C. § 1651(a), because a stay is “necessary or appropriate in aid of [the Court’s] jurisdiction[]

and agreeable to the usages and principles of law.” Moreover, this Court’s power is not affected by the Anti-Injunction Act, which states:

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283. The analysis warranting a stay under the All Writs Act overlaps with the analysis as to why the Anti-Injunction Act permits this Court to enter and enforce the expanded litigation stay.

Specifically, this Court can enjoin the above claims in the six (6) pending lawsuits (and similar lawsuits) because doing so is “necessary in aid of its jurisdiction” and will work to “effectuate” its ultimate judgment relating to the property of the Receivership Estate. When an officer of the Court – such as the Receiver – takes possession of property, “the property is hereby withdrawn from the jurisdiction of all other courts.” *Gasser v. Infanti Int’l, Inc.*, No. 03 CV 6413(ILG), 2004 U.S. Dist. LEXIS 9758, at *4 (E.D.N.Y. Apr. 21, 2004) (staying action that involved receivership property to aid the jurisdiction of the court and to effectuate its judgments); *see also In re the Reserve Fund Sec. and Derivative Litig.*, 673 F. Supp. 2d 182, 204 (S.D.N.Y. 2009) (finding that stay of cases claiming entitlement to money-market fund assets under SEC supervision was necessary to aid the court’s jurisdiction and “to protect and effectuate” its judgment). Indeed, other federal courts have also considered whether the state court actions would “sufficiently impair the federal proceeding” or “present a sufficient threat to the federal action.” *See Piper v. Portnoff Law Assoc.*, 262 F. Supp. 2d 520, 530 (E.D. Pa. 2003) (finding a stay was appropriate) (*quoting In re Diet Drugs*, 282 F.3d 220, 234 (3d Cir. 2002)).

Here, all of these factors militate in favor of staying the above claims in the six (6) subject lawsuits (and similar lawsuits) against not only the Receivership Entities, but also the individual defendants and any other entity or individual to whom the Receiver may seek claims, including

against those who received monies, property, or other assets that rightfully belongs to the Receivership Estate. If these private actions are allowed to proceed, they may threaten or diminish receivership property, which is within this Court's sole jurisdiction. Moreover, if these lawsuits are allowed to proceed, it will create a destructive precedent for federal court receiverships. Allowing the lawsuits to proceed simply because they are not in federal court would also be an open invitation to anyone with a claim against any federal court receivership to bring the claim in state court or arbitration. This result is against precedent and sound public policy. In sum, it does not matter that certain lawsuits were filed in state courts.

III. CONCLUSION

Based on the above arguments, until the resolution of the Receivership or further order of this Court, the Receiver requests that this Court enter an Order expanding paragraph 15 of the Amended Receivership Order staying the pending known lawsuits. Further, the Receiver requests that this Court expand paragraph 15 of the Amended Receivership Order and enjoin any individual or entity from initiating, maintaining, or in any way prosecuting in any court or other tribunal any proceeding, suit, or action, against any of the Receivership Entities, Defendant Joseph Sigore, and/or Defendant Paul L. Schumack, II (collectively, "Individual Defendants"). In addition, the Receiver requests that the Court enjoin any individual or entity from filing, initiating, maintaining, or in any way prosecuting in any court or tribunal any proceeding, suit, or action that may diminish, usurp, or in any way disturb the assets or proceeds of the Receiver or the Receivership Entities including, but not limited to, causes of action that belong to the Receiver, or which the Receiver may have standing to bring, or any causes of action that may belong to any investors or any class or group of investors against the Receivership Entities; the Receivership Entities' former officers

and directors (including the Individual Defendants' spouses), principals, employees; other third parties; and/or the Individual Defendants.

Finally, the Receiver requests that he may provide effective notice of the requested Order by facsimile, electronic mail, by publication as provided for in the Federal Rules of Civil Procedure, or by filing notice of this Order in any such proceeding that may have already been commenced prior to the entry of this Order.

Attached as Exhibit A is a proposed order granting the instant Motion for the Court's consideration.

LOCAL RULE 7.1(a)(3) CERTIFICATE

The undersigned has conferred with counsel for Plaintiff Securities and Exchange Commission, Russell Koonin, Esq., who does not oppose this Motion.

The undersigned has conferred with Jacob Cohen, Esq., who advised that Defendant Paul Schumack takes no position on this Motion at this time.

Because *pro se* Defendant Signore is in custody in a parallel criminal case, the undersigned cannot communicate with him to obtain his position on this Motion. The undersigned has contacted Defendant's Signore's criminal counsel on other motions and he has advised that he is not counsel in the instant case and cannot take positions. As a result, the undersigned did not contact Defendant Signore's counsel again on this Motion. Accordingly, with regards to Defendant Signore, the undersigned herein seeks leave from Local Rule 7.1(a)(3) from the Court.

Dated: April 22, 2014

Respectfully submitted,

s/ Jeffrey L. Cox
Jeffrey L. Cox, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 22, 2014, I electronically filed the above document using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Jeffrey L. Cox
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