

UNITED STATES DISTRICT COURT
 MIDDLE DISTRICT OF FLORIDA
 TAMPA DIVISION

Case No. 8:09-cv-87-T-26TBM

SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	RICHARD T. WILLIAMS, III AND
	:	KRISTIN P. SEIGWALD’S UNOPPOSED
	:	MOTION FOR LIMITED RELIEF
ARTHUR NADEL et al.,	:	FROM INJUNCTION
	:	
Defendants.	:	
	:	
	/	

Pursuant to Rules 60 and 65, Fed. R. Civ. Proc., RICHARD T. WILLIAMS, III and KRISTIN P. SEIGWALD (“Williams and Seigwald”) move for limited relief from the Order of Injunction dated September 3, 2009 (“Injunction Order”) [Dkt. #190], as subsequently modified by this Court pursuant to its January 29, 2010 Order (“Modification Order”) [Dkt. #332] and state as follows:

BACKGROUND AND REQUEST FOR RELIEF

1. On January 21, 2009, the United States Securities Exchange Commission filed the instant action (the “Federal Action”). A receiver was appointed on January 21, 2009 to gather up all assets potentially obtained through the fraudulent schemes for the benefit of all investors.

2. On or about February 4, 2009, LOUIS PAOLINO (“Paolino”) filed a state court action for claims overlapping those addressed in the Federal Action, which state court action is styled *Louis D. Paolino, Jr. v. Neil v. Moody and Christopher D. Moody, Case*

No. 2009 CA 001876 in the Circuit Court in and for Sarasota County, Florida (the “State Action”).

3. On August 25, 2009, the Receiver in the Federal Action filed a Motion to Enjoin State Court Proceeding and for Possession of Jewelry [Dkt. #177], which motion sought to permanently enjoin the State Action to the extent the action sought to apply claims against fraudulently obtained assets.

4. On September 3, 2009, this Court entered the Injunction Order, stating that “the state action must be enjoined.” As set forth in the Injunction Order, the State Action created a realistic threat that Paolino would receive a windfall to the detriment of all other investors. Paolino filed a Motion for Relief from Order/Clarification [Dkt. #191] and this Court denied the motion, again stating that the purpose of the Federal Action was to ensure that the assets of the Receiver’s estate were for the benefit of all investors, not just Paolino [Dkt. #192].

5. One of the properties Paolino sought to attack in the State Action is real property commonly referred to as 1311 Tangier Way, Sarasota, Florida (the “Subject Property”). The Subject Property was initially purchased by the Moodys on April 22, 2005. At that time, the Subject Property was encumbered by a purchase money mortgage for \$1.5 Million and a second mortgage for \$380,000. The Moodys subsequently refinanced the second mortgage and added a new second mortgage for \$975,000.

6. In the summer/fall of 2009, Williams and Seigwald sought to purchase the Subject Property as a short sale purchase (the encumbrances from the first and second mortgage vastly exceeded the fair market value of the Subject Property).

7. In connection with the purchase, Williams and Seigwald obtained a Consent to Sale from the Receiver. A copy of the Consent to Sale is attached as **Exhibit “1”**. The Receiver determined that the Subject Property had no equity which could be subject to claims of those defrauded by the purported investment schemes.

8. In reliance on the permanent injunction and the Consent to Sale, Williams and Seigwald officially purchased the Subject Property on December 1, 2009.

9. Despite having been permanently enjoined from attacking the Subject Property, on January 21, 2010, Paolino filed an Emergency Motion for Modification of Injunction in the Federal Action [Dkt. #322]. The Motion sought a modification of the prior injunction permitting Paolino to file a Motion for Extension of *Lis Pendens* in the State Action.

10. Thereafter, on January 28, 2010, the Receiver filed a Response to the Motion for Modification, raising concerns with the nature of the Motion, although offering no opposition to the proposed request to the extent Paolino sought to extend the *Lis Pendens* against the Subject Property [Dkt. # 329]. As expressly set forth in the Response, the Receiver stated unequivocally that the secured debt against the Subject Property significantly exceeded the actual value of the Subject Property. The Receiver permitted the Subject Property to be sold to Intervenors in a short sale rather than take on the liabilities and debts connected therewith. Once again, the Receiver admonished Paolino regarding the continual interference with the Receiver’s efforts.

11. On January 29, 2010, this Court entered the Modification Order, with the sole modification allowing Paolino to seek an extension of the *lis pendens* against the Subject Property.

12. Paolino then proceeded with an Emergency Motion to Extend the Notice of Lis Pendens over the Subject Property which was granted by the Court on February 3, 2010. A copy of the Extension Order is attached as **Exhibit "2"**.

13. Due to Paolino's Emergency Motion and efforts to extend the lis pendens over the Subject Property notwithstanding the permanent injunction and Consent to Sale, Williams and Seigwald sought and were granted intervention in the State Action.

14. Since intervening to protect their interests, Williams and Seigwald have been prohibited from taking action to address the lis pendens or bring the State Action to a close due to the permanent injunction set forth by the Injunction Order.

15. Because the Injunction Order permanently enjoined the State Action and has not been modified except as provided by the Modification Order, Paolino's claims in the State Action remain forever barred.

16. Accordingly, Williams and Seigwald seek limited relief from the Injunction Order so that they extinguish the constructive trust claim as against their property.

WHEREFORE, RICHARD T. WILLIAMS, III and KRISTIN P. SEIGWALD respectfully request entry of an Order providing limited relief from the Court's September 9, 2009 Injunction Order to permit Williams and Seigwald to file a motion for summary judgment in the State Action to extinguish the constructive trust claim against the subject property and to permit the State Court to consider and rule upon said motion and otherwise confirm the Injunction Order in all other respects.

LOCAL RULE 3.01(g) CERTIFICATE OF GOOD FAITH CONFERENCE

Undersigned counsel hereby certifies that he has conferred with Gianlua Morello, Esq., counsel for the Receiver, who has confirmed that the Receiver neither consents nor

objects to the relief requested in this Motion to the extent that it does not require any expenditure of receivership resources. Undersigned has further conferred with Scott A. Masel, Esq. counsel for the Securities and Exchange Commission, who has confirmed that the Commission does not oppose the above Motion.

Date: April 29, 2011

Respectfully Submitted:

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By: /s/ Jason T. Gaskill
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 29, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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