

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

WACHOVIA BANK, N.A.,)	Civil Action No. 2:09-CV-0076
)	
Plaintiff,)	Judge Marbley
)	
vs.)	Magistrate Judge Kemp
)	
ZOMAX, INCORPORATED, et al.)	
)	
Defendants.)	

AGREED ORDER

This matter comes before the Court on Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction pursuant to 28 U.S.C. § 2361 and 28 U.S.C. § 1335, the federal interpleader statute (Doc. 4), on the preliminary informal conference on Plaintiff's Motion held on February 2, 2009, pursuant to S.D. Ohio Civ. R. 65.1(a), and on the agreement of Plaintiff and Defendants as to the terms of this Agreed Order of Injunction. The Court, being fully advised in this matter, finds that (1) an injunction, enjoining the state court garnishment actions related to the Zomax Funds in the Ohio Court of Common Pleas, Franklin County, Case No. 08-JG-28501 and in the North Carolina General Court of Justice, Superior Division for Forsyth County, Case No. 08 CVS 7328, is necessary to prevent inconsistent rulings concerning the rightful disposition of the Zomax Funds; (2) an injunction preventing all Defendants from instituting, commencing, prosecuting, or continuing any action or garnishment proceeding related to the Zomax Funds is necessary for the same reason; (3) the injunction will be effective until the conclusion of this

interpleader case, at which time the Court will decide whether the injunction is permanent; and (4) all parties agree that this injunction is necessary.¹

It is therefore **ORDERED**, that, effective immediately:

(1) All Defendants are hereby restrained from instituting, commencing, prosecuting, or continuing any other action or garnishment proceeding for the recovery of all or any portion of any funds which Wachovia has deposited with the Court in this action ("Funds") or any form of declaratory relief relating to the Funds until further order of the Court; provided, that this Order shall not be construed to limit in any way the right of any Defendant to assert in this action any claim which it might otherwise properly assert herein. Defendants are permitted to take such action as necessary to preserve their interests that they possess at the time of this Order.

(2) The garnishment action in the Ohio Court of Common Pleas, Franklin County, Case No. 08-JG-28501, relating to the Funds and the garnishment action in the North Carolina General Court of Justice, Superior Division for Forsyth County, Case No. 08 CVS 7328, relating to the Funds are hereby permanently enjoined and stayed until further order of this Court.

(3) The injunction is effective until the conclusion of this interpleader case, at which time the Court will decide whether the injunction is permanent.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Court Judge

Date: March 5, 2009

¹ As stated in the Order issued by the Court on February 2, 2009, (Doc. 5), "as Federal Rule of Civil Procedure 65 does not apply to requests for injunctive relief under 28 U.S.C. § 2361, Plaintiff can obtain injunctive relief without satisfying the elements required by that rule." (Doc. 5, p. 4, n. 4) (citing *Thrivent Fin. for Luterhans v. Thompson*, No. 3:04-cv-327, 2005 WL 2290312, at *3 (S.D. Ohio Sept. 20, 2005)). Therefore, issuance of this preliminary and permanent injunction order is proper even if Plaintiff could not demonstrate irreparable injury.

AGREED:

s/ Rebecca B. Jacobs

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