

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**ALBERT E. PARISH, JR., PARISH
ECONOMICS, LLC, and
SUMMERVILLE HARD ASSETS, LLC,**

Defendants.

**CIVIL ACTION NO.
2:07-cv-00919-DCN**

**RECEIVER'S MOTION FOR APPROVAL
OF SETTLEMENT AGREEMENT AND RELEASE OF YOLANDA YODER
AND BRIEF IN SUPPORT THEREOF**

S. Gregory Hays, the Court-appointed Receiver for Albert E. Parish ("Parish"), Parish Economics, LLC ("Parish Economics"), and Summerville Hard Assets, LLC ("SHA") (collectively the "Receiver Entities" or the "Receiver Estate"), files this Motion seeking approval of a settlement and compromise with Defendant Parish's wife, Yolanda Yoder ("Yoder"). In support of this motion, the Receiver shows this Court as follows:

Factual Background

This case was filed by the SEC seeking damages, as well as injunctive and other equitable relief, from the Defendants as a result of a fraudulent investment offering that raised in excess of \$100 million from approximately 600 individual investors. Pursuant to Orders entered in this action on April 5, 2007, and April 12, 2007 (“the Receivership Orders”), this Court appointed S. Gregory Hays to serve as Receiver for Parish, Parish Economics, and SHA. Among other things, the Receivership Orders authorize and direct the Receiver to “...file and prosecute... any civil actions or other proceeding that could be filed by” the Receiver Entities. (April 5 Receivership Order at § IX; April 12 Receivership Order at § VIII.) The authority granted to the Receiver by the Receivership Orders includes the discretion to “to settle, compromise or adjust any pending or future action or proceeding as may be advisable or proper for the protection and administration of the Receiver Estate.” (Id.)

Yolanda Yoder is the wife of Defendant Parish and a member and officer of Defendant Parish Economics. By virtue of her relationship with Parish and her membership interest in Parish Economics, Ms. Yoder has been named as a defendant in not less than six (6) civil actions filed in the South Carolina Court of Common Pleas by various investors arising from and related to the investment offerings that form the basis for this action, which include:

- Charleston S. Univ. v. Parish, et al., Case No. 07-CP-10-1405;
- Smith v. Yoder, Case No. 07-CP-08-809;
- Elrod, et al. V. Charleston S. Univ., et al., Case No. 07-CP-10-1465;
- Crosland, et al. v. Parish, et al., Case No. 07-CP-10-1421;
- Pearlman, et al. v. Parish, et al., Case No. Case No. 07-CP-10-1419; and
- White, et al. v. Parish et al., Case No. 07-CP-10-1420.

These cases are collectively referred to below as the “Investor Lawsuits.”

At the time of the filing of this action, certain assets that were acquired or improved using monies obtained from investors during the course of her husband’s investment scheme were titled in Ms. Yoder’s name and/or were in the possession of Parish and Yoder. These assets include real property, most of which was owned jointly with Parish, along with cash, furniture, art, jewelry and other household furnishings. Because these assets are proceeds of the underlying scheme and are assets of the Receiver Estate, the Receiver made demand on Ms. Yoder for the turn-over of these items.

From the very beginning of this case, the Receiver and the professionals working with him have been in close contact with Ms. Yoder and her counsel. Ms. Yoder has been interviewed by Receiver’s counsel on several occasions. Other witnesses have provided information, and documents regarding Ms. Yoder and the subject assets have been collected and analyzed. Among other things, the Receiver

and the professionals working with him have endeavored to determine whether Ms. Yoder was a knowing participant in her husband's investment scheme that is the subject of this action. In short, there is no evidence of her active involvement in the investment scheme or actual knowledge that it was a fraud. In addition, Ms. Yoder has twice submitted to polygraph examinations administered by and through the Federal Bureau of Investigation, which corroborate this finding.

While Ms. Yoder denies any liability to investors (including the Plaintiffs in the Investor Lawsuits), she does recognize that, in light of the facts discovered, assets purchased with investors' money should be liquidated and the proceeds returned to investors. Ms. Yoder also recognizes that the cost of defending the Investor Lawsuits, the claims that could be asserted by the Receiver and any yet to be filed litigation would almost certainly bankrupt her. Moreover, it is evident that Ms. Yoder does not have other assets that would be available to satisfy any judgment entered against her in any such litigation, and there is no known available insurance coverage for any of these claims.

As this case has progressed, counsel for the Receiver and Ms. Yoder have engaged in extensive settlement negotiations. Before a definitive agreement was reached, Ms. Yoder has fully cooperated with the Receiver in his efforts to liquidate assets of the Receiver Estate, including many personal and household items in which she claimed an equitable or legal interest. Ms. Yoder's cooperation and

assistance allowed the Receiver to sell furniture, items of art, clothing and other household items during the public auction conducted in July 2007, the proceeds of which inured to the benefit of the Receiver Estate.

For these reasons, the Receiver believes that it is in the best interest of the Receiver Estate, investors and other creditors for an all encompassing settlement to be reached with Ms. Yoder. Likewise, Ms. Yoder and her counsel believe that it is in the best interest of Ms. Yoder and the Parish children to resolve all of these issues. Accordingly, the Receiver and Ms. Yoder have agreed to settle and compromise the Receiver's claims in accordance with and subject to the terms and conditions set forth in the written Settlement Agreement dated November 21, 2007, a copy of which is attached hereto as Exhibit "A."

The Settlement Agreement

In a nutshell, the Settlement Agreement provides that with very limited exception, Ms. Yoder conveys her interest in all assets to the Receiver, which shall be administered as part of the Receiver Estate. In exchange, the Receiver releases Ms. Yoder from any and all claims that he or the Receiver Estate may have. Importantly, this settlement is expressly conditioned upon this Court's entry of a "bar order," enjoining the further filing or prosecution of claims against Ms. Yoder (and her four children: W. Parish, E. Parish, M.E. Parish, and S. Parish) that in any way relate to or arise from the investment offerings conducted and managed by her

husband, Al Parish, and Parish Economics and SHA. (See, Section III. “Bar Order”, below.)

The specific terms of the settlement and compromise are set forth in the attached Settlement Agreement. The terms that the Receiver believes are fundamental to the settlement are summarized as follows:

- a. Real Property. Ms. Yoder conveys to the Receiver all right, title and interest, whether legal or equitable, that she may have in (and disclaims any interest in) all of the real property in the “marital estate,” which, in effect, includes all real property in which she has an interest. These properties include the family’s principal residence in Summerville, South Carolina; a town house in Charleston, South Carolina; vacation and rental properties located on Edisto Island, South Carolina and in Highlands, North Carolina; and, a time-share interest at Disney World in Orange County, Florida. Moreover, Ms. Yoder disclaims any legal, equitable or other interest that she may have in any other real property in which Parish or any Receiver Entity has an interest. Of particular importance is a vacation and rental house in Highlands, North Carolina that is titled in Ms. Yoder’s name, only. The initial down payment on this house was paid with the proceeds of the sale of a condominium owned by Ms. Yoder prior to her marriage

to Parish. There is no mortgage or other debt secured by this property, and the Receiver believes that its market value exceeds \$500,000. Ms. Yoder has disclaimed her interest in this property, including the full value of her invested down payment thereon. As indicated in the Receiver's Motion to Approve the Sale Of Certain Real Property Free and Clear of Liens, Claims and Encumbrances and Brief in Support Thereof filed on November 16, 2007, the other properties are heavily encumbered and may have no value to the Receiver Estate.

- b. Personal Property. In general, the Receiver has allowed Ms. Yoder to retain sufficient personal property to "start over" in establishing a modest household with her four children who are aged twelve years and younger. In addition, Ms. Yoder has retained heirlooms and other personal effects that are either: from her family or are sentimental in nature, with virtually no value whatsoever (e.g., family photographs). The specific items being retained by Ms. Yoder are identified in an exhibit to the attached Settlement Agreement. The Receiver has also agreed that Ms. Yoder may retain the 2005 Chrysler Town & Country vehicle. In relative terms, the items retained by Ms. Yoder have very little value. Conversely, Ms. Yoder has turned over to the Receiver and disclaimed any interest in all other items of personal property

including, but not limited to, luxury vehicles, art, furniture and jewelry. In this regard, it should be noted that Ms. Yoder has turned over items of jewelry that she wore at her wedding.

- c. Other Assets. Except for the initial cash that she was allowed to retain at the outset of this case, Ms. Yoder has relinquished any claim to cash, stocks, bank accounts, etc. The Receiver disclaims any interest the Receiver Estate may have in her retirement savings, which are related to her employment years ago and wholly unrelated to the investment offerings. Ms. Yoder also disclaims any interest in various business ventures or similar investments made by Parish in which she may have an interest.
- d. The Receiver agrees to pay certain moving and storage expenses associated with items ultimately turned over to Ms. Yoder, but which have been placed in storage as a direct result of the Receiver's seizure of those assets. The Receiver has also continued to make certain payments related to the real properties (e.g., utilities).
- e. If the Settlement Agreement is approved and the "bar order" entered, the Receiver has indemnified Ms. Yoder and her children up to \$750,000 against any claims that are in any way related to the subject investment offerings.

The “Bar Order”

Simply stated, by virtue of this settlement, the Receiver has effectively recovered or will recover from Ms. Yoder everything that she has that might be available to satisfy any judgment entered against her and has “cleared title” to all assets that should be included in the Receiver Estate. While Ms. Yoder is willing to enter into such an arrangement, she is only willing to do so if she knows that she will not be required to continue to incur the expense of defending litigation. This is not an unreasonable position.

The Receiver believes that the resolution of all matters regarding Ms. Yoder’s potential liability in connection with the subject investment offering in accordance with the terms of the Settlement Agreement is fundamentally fair and in the best interest of all concerned, including investors and other creditors. Among other things, this arrangement allows for:

- the subject assets to be used for the benefit of the Receiver Estate rather than funding Ms. Yoder’s defense of multiple litigations;
- all investors and other creditors to share in any benefits derived from Ms. Yoder’s assets rather than having the Investor Plaintiffs (and other claimants) “compete” for those assets; and,
- all claims to be resolved, litigation terminated and assets used for the benefit of investors and creditors without Ms. Yoder being forced into

bankruptcy, which would be time consuming and expensive for all concerned.

The reality is that the settlement with the Receiver is the best and, quite likely, the only way for all investors to benefit from Ms. Yoder's assets. However, these benefits can only be realized if all litigation against Ms. Yoder is concluded and further litigation is enjoined.

The settlement with Ms. Yoder resolves myriad issues regarding numerous assets, as well as providing for an orderly and effective resolution of the claims of the Receiver (and others) related to Ms. Yoder's liability, if any, arising from the subject investment schemes. It also allows the Receiver and, ultimately, this Court to take control of the subject assets and administer them for the benefit of investors and other creditors without interference by competing claimants.

It is beyond dispute that Section 22 of the Securities Act of 1933, Sections 21(d), (e), and 27 of the Securities Exchange Act of 1934, and Section 214 of the Investment Advisers Act of 1940 confer jurisdiction upon this Court over the Receivership, the Receiver Estate, and assets that are attributable to funds provided by an investor or client of the Defendants, including Ms. Yoder's assets that are the subject of this Motion. See 15 U.S.C.S. § 77v; 15 U.S.C.S. §§ 78u(d), (e), 78aa; 15 U.S.C.S. § 80b-14; 28 U.S.C. 754; See also 6A Moore's Federal Practice § 66.06(1)(c) ("The appointing court and the receiver have exclusive jurisdiction and

control over property surrounding the dispute.”) (3d ed. 2007); Charles Alan Wright, et al., *Federal Practice and Procedure* § 2985, at 42-43 (2d ed. 1997); 6A Moore’s *Federal Practice* § 66.06(1)(a) (“An order of appointment grants the receiver exclusive jurisdiction over property in the district where the appointing court is located.”) (3d ed. 2007).

When this case was filed by the SEC, this Court took exclusive jurisdiction over the all aspects of the receivership and the assets of the Receiver Estate. (See April 5 Receivership Order at § VI; April 12 Receivership Order at § V.) In the Receivership Orders, the court authorized and directed the Receiver to engage in various activities for the ultimate benefit of investors and other creditors.

Moreover, the Court enjoined third-parties from interfering with the Receiver and the administration of the subject assets. (April 5 Receivership Order at §§ VII, XIX; April 12 Receivership Order at §§ VI, XVIII.) Though likely unintended, it is evident that the continued prosecution of the Investor Lawsuits, as well as other efforts by competing claimants, interfere with and impede the Receiver’s efforts.

The All Writs Act, 28 U.S.C. § 1651, authorizes federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” In re Consol. Welfare Fund “ERISA” Litig., 798 F. Supp. 125, 127 (D.N.Y. 1992). This authority includes enjoining prosecution of state court litigation that may frustrate the implementation of a court

order (such as the Receivership Orders in this case), or the proper administration of justice or orderly resolution of litigation in federal court, or impair the federal court's flexibility and authority to decide a case. In re: Inter-Op Hip Prosthesis Prod. Liab. Litig., 176 F. Supp. 2d 758, 763 (N.D. OH 2001) (*vacated in part*, on other grounds); Welfare Fund "ERISA" Litig., 798 F. Supp. at 127; In re Asbestos Sch. Litig., 1991 U.S. Dist. LEXIS 5142, *3 (D. Pa. 1991); In re Baldwin-United Corp., 770 F.2d 328, 335 (2d Cir. 1985). "The power conferred by the [All Writs] Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompasses even those who have not taken any affirmative action to hinder justice." United States v. New York Tel. Co., 434 U.S. 159, 173-174 (1977); Welfare Fund "ERISA" Litig., 798 F. Supp. at 127.

Because there are state court cases actually pending (i.e., the Investor Lawsuits), this Court must be mindful of the Anti-Injunction Act, which expressly prohibits federal courts from enjoining the prosecution of *pending* state court actions.¹ 28 U.S.C. § 2283. However, the statute makes clear that there are

¹ The Anti-Injunction Act is not applicable to, and therefore does not preclude, injunctions against state court actions that have not yet been filed, but only addresses stays of lawsuits already filed. Dombrowski v. Pfister, 380 U.S. 479, 485, n.2 (1965) ("This statute and its predecessors do not preclude injunctions against

exceptions to this prohibition. Specifically, a district court may enjoin pending state court proceedings: (1) as expressly authorized by Congress, or (2) where necessary in aid of its jurisdiction, or (3) to protect or effectuate its judgments. 28 U.S.C. § 2283; see also, In re: Inter-Op, 176 F. Supp. 2d at 762.

In this case, the entry of an injunction against the pending state court litigation is necessary and appropriate to preserve and aid this Court's jurisdiction over the administration of the receivership and the assets of the Receiver Estate.² See In re Wireless Tel. Fed. Cost Recovery Fees Litig., 2003 U.S. Dist. LEXIS 26070, *13-14 (D. Mo. 2003) ("This Court may rely on the Anti-Injunction Act's "necessary in aid of its jurisdiction" exception to "support the court's power to effectuate a final settlement."). The "necessary to aid its jurisdiction" exception, means that an injunction may be issued where "necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to

the institution of state court proceedings, but only bar stays of suits already instituted."); BGW Assocs., Inc. v. Valley Broad. Co., 532 F. Supp. 1115, 1117 (D.N.Y. 1982) ("This limitation on federal judicial power relates only to actions already instituted in state courts.").

² At least two jurisdictions have held that the Anti-Injunction Act is not applicable to cases such as this where a receiver has been appointed after a lawsuit was brought by the Securities Exchange Commission seeking to enforce securities law. SEC v. Wencke, 622 F.2d 1363, 1368 (9th Cir. 1980) ("[S]ection 2283 does not apply to injunctions issued at the request of the United States or administrative agencies enforcing applicable federal law."); Welfare Fund "ERISA" Litig., 798 F. Supp. at 127 (citing Wencke, 622 F.2d at 1368).

seriously impair the federal court's flexibility and authority to decide that case.” Winkler v. Eli Lilly & Co., 101 F.3d 1196, 1201 (7th Cir. 1996) (quoting Atlantic Coastline R.R. v. Bhd. of Locomotive Eng'rs, 398 U.S. 281, 295 (1970)). “The exception thus parallels the federal courts' power under the All Writs Act ‘to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.’” Id. (quoting United States v. New York Tel., 434 U.S. 159, 173 (1977)); Winkler, 101 F.3d at 1202 (“We agree that the ‘necessary in aid of jurisdiction’ exception should be construed ‘to empower the federal court to enjoin a concurrent state proceeding that might render the exercise of the federal court’s jurisdiction nugatory.’”).

It is obvious that clarifying the ownership issues and allowing the Receiver to take control of the assets involved in the settlement with Ms. Yoder aids this Court’s jurisdiction over the receivership and further effectuates the provisions of the Receivership Orders. It also enhances the Receiver’s and, ultimately, the Court’s ability to develop and implement a plan of distribution. See Welfare Fund "ERISA" Litig., 798 F. Supp. at 128 (upholding an injunction of state court proceedings where the court found that it would be unable to develop an equitable plan for the distribution of the assets of a fund to protect the rights of all potential

creditors if a “race to the courthouse” was permitted, depleting some or all of the fund’s remaining assets). Hence, the injunction sought here is not precluded by the Anti-Injunction Act.

Accordingly, as expressly authorized by the All Writs Act, this Court should enjoin any state court proceeding, including currently pending actions and potential litigation, against Ms. Yoder and her children because conflicting or competing orders from different courts “would only serve to make ongoing federal oversight [of the Receiver Estate] unmanageable,” and “threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation.” Winkler, 101 F.3d at 1202.

IV. Conclusion

Based on the facts and authority cited herein the Receiver respectfully requests that this Court approve the terms of a settlement with Yolanda Yoder and grant his Motion for Approval of Settlement Agreement and enter an order enjoining further prosecution of all claims against Ms. Yoder.

Respectfully submitted, this 21st day of November, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 2007, I electronically filed the foregoing document with the Clerk of this Court using the CM/ECF system, which will automatically send email notification of such filing to all case parties via email.

TROUTMAN SANDERS LLP

/s/ David Popowski

David Popowski