

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>Plaintiff,</p> <p>vs.</p> <p>STANLEY J. KOWALEWSKI and SJK INVESTMENT MANAGEMENT, LLC</p> <p>Defendants.</p>	<p>CIVIL ACTION NO. 1:11-cv-0056-TCB</p>
--	--

**RECEIVER'S EMERGENCY MOTION TO ADD RECEIVERSHIP
DEFENDANT AND AMEND RECEIVERSHIP ORDER AND BRIEF IN
SUPPORT THEREOF**

S. Gregory Hays, Receiver (the "Receiver") files this Emergency Motion and Brief asking that this Court, on an expedited basis, add SJK Special Opportunities Fund, LP (the "Special Opportunities Fund") as a defendant in this action and include it as a part of the Receiver Estate established pursuant to the receivership order entered in this action on February 2, 2011 (the "Receivership Order"). In support of this Emergency Motion, the Receiver shows this Court as follows:

Factual Summary

The Receiver was appointed by this Court as Receiver for Defendants Stanley J. Kowalewski (“Kowalewski”) and SJK Investment Management, LLC (“SJK”) (collectively, the “Receiver Estate”). Among other things, the Receivership Order authorizes and directs the Receiver to:

- a. take custody, control, and possession of all records, assets, and other property of the Receiver Estate;
- b. conduct the business operations of Defendants, including the continuation or termination of employment arrangements and all other aspects of any active business operation;
- c. administer the assets of the Receiver Estate, including the authority to liquidate assets;
- d. perform an accounting of the receipt, disposition, and use of the subject investment proceeds; and
- e. investigate any matters that the Receiver deems appropriate in connection with the Receiver Estate.

The Special Opportunities Fund was an integral part of the business enterprise that is the subject of this action. As set forth more fully in the Receiver’s First Interim Report, which is being filed contemporaneously herewith,

the Special Opportunities Fund was the primary vehicle used by Kowalewski and SJK to gain access to investors' funds.

In short, Kowalewski and SJK used two of the four funds-of-funds managed by SJK, the SJK Absolute Return Fund, Ltd and the SJK Absolute Return Fund, LLC (collectively, the "Absolute Return Funds"), to transfer investor funds to the Special Opportunities Fund. The Absolute Return Funds operated similarly to one another, with the SJK Absolute Return Fund, Ltd serving as the offshore version and the SJK Absolute Return Fund, LLC serving as the onshore version. Each of the Absolute Return Funds provided for the payment to SJK of management fees equal to approximately 1% of the assets being managed in the funds per year and an incentive fee equal to 10% of any gains realized by the funds per year. The funds also paid the expenses incurred directly by the funds.¹ However, neither of the funds was structured to pay the expenses of Kowalewski or SJK.

On November 30, 2009, the Defendants formed the Special Opportunities Fund. The Special Opportunities Fund provided for the payment to SJK of an incentive fee equal to 20% of any annual gains in the fund. The Special Opportunities Fund also provided for the payment of certain of SJK's expenses in

¹ The funds' fee and expense structures are explained in detail in the Receiver's First Interim Report.

addition to its own direct expenses. The original Private Offering Memorandum for the Special Opportunities Fund, which was issued in January 2010, placed a cap on SJK's expenses of \$500,000 and prohibited the payment of any salaries or bonuses to SJK's employees. However, the Defendants amended the Private Offering Memorandum for the fund in August 2010 to remove the cap on expenses and provide that the fund would pay all of SJK's expenses, including its employees' salaries and wages.

Approximately \$16.6 million was transferred from the Absolute Return Funds to the Special Opportunities Fund, where the money was then used for purposes not authorized by either of the Absolute Return Funds. Just over \$10 million was paid to SJK in incentive fees and expenses (approximately \$7,450,000 of which was paid to Kowalewski in "member draws"). The Special Opportunities Fund also purchased a beach house and invested in other real estate business ventures. Kowalewski has acknowledged that none of the investors in the Absolute Return Funds was ever shown the Private Offering Memorandum for the Special Opportunities Fund. (Doc. 1-4, p. 29.)

Further, it appears that the Defendants inflated the value of the assets purchased by the Special Opportunities Fund in the financial reports provided to the two Absolute Return Funds. This had the effect of creating illusory gains in

the Special Opportunities Fund, and SJK apparently paid itself an incentive fee from the fund relating to these illusory gains. This was seemingly compounded when the illusory gains were included in the valuation of the Absolute Return Funds, thereby artificially inflating the value of the Absolute Return Funds that was used to calculate SJK's 10% incentive fee for gains in the Absolute Return Funds. Accordingly, investors in the Absolute Return Funds whose money was invested by SJK in the Special Opportunities Fund paid SJK an incentive fee for the Special Opportunities Fund based on illusory profits and another incentive fee for the Absolute Return Fund which was based in part on the same illusory profits.

As more fully described in the First Interim Report, the Special Opportunities Fund has approximately \$1,438,472.87 in cash on hand and owns a beach house. It also owns other assets, which might include causes of action. All of the Special Opportunities Funds' assets should be included in the Receiver Estate for the benefit of the investors whose money was used to acquire them.²

Clearly, the overall objectives of this receivership will be advanced, and the receivership will function much more efficiently, if the Receiver is able to directly

²Please see the section of the First Interim Report entitled "Special Opportunities Fund" for a detailed description of the Fund's assets.

control and direct the assets of the Special Opportunities Fund. Accordingly, the Receiver believes that this fund should be included in the Receiver Estate.

Citation of Authority

In relevant part, Fed. R. Civ. Pro. 19 (a) – Joinder of Persons Needed for Just Adjudication – provides:

Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person’s absence, complete relief cannot be accorded among those already parties . . .

The Special Opportunities Fund falls squarely within the ambit of this rule. It is subject to service of process; its joinder as a defendant will not deprive the court of jurisdiction; and, most importantly, its inclusion in the receivership is necessary to afford complete relief here.

If the Court is not persuaded that the Special Opportunities Fund is necessary under Rule 19, then Fed. R. Civ. Pro. 20 regarding permissive joinder provides another basis for adding it as a defendant. In relevant part, Rule 20 provides:

Permissive Joinder. All persons . . . may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if

any question of law or fact common to all defendants will arise in the action.

Again, the Special Opportunities Fund falls squarely within the parameters of this rule. The allegations made against the Defendants apply with equal force to the Special Opportunities Fund. It is an important part of the series of transactions and occurrences that are the subject of the SEC's complaint.

Other than the rules themselves, there is not a significant amount of controlling authority regarding the joinder issues presented here. However, it is evident that the decision to add the Special Opportunities Fund is well within the discretion of this Court. *See e.g., Ford Plantation, LLC v. Black*, 205 F.R.D. 698 (S.D. Ga. 2000); *see also SEC v. Mobile Billboards of America, Inc., et al.*, No. 1:04-cv-2763-WBH (N.D. Ga. 2004), Consent Order dated October 18, 2004 (a copy of the Order is attached as Exhibit A). The facts make clear that the Special Opportunities Fund was a part of the business enterprise that was placed in receivership. For full relief to be obtained, it, too, should be a part of the Receiver Estate. Accordingly, the Receiver requests that the Special Opportunities Fund be added as a defendant and placed under the Receiver's direction and control in accordance with the terms and provisions of the Receivership Order dated February 2, 2011.

Conclusion

The Special Opportunities Fund should be included in this receivership. It was an integral part of the business enterprise at issue in this action. Complete relief cannot be had here if it remains outside the receivership. Accordingly, the Receiver requests that this Emergency Motion be granted.

Respectfully submitted, this 3rd day of March, 2011.

/s/ J. David Dantzler, Jr. _____

J. David Dantzler, Jr.

Georgia Bar No. 205125

david.dantzler@troutmansanders.com

Thomas B. Bosch

Georgia Bar No. 068740

tom.bosch@troutmansanders.com

Charles R. Burnett

Georgia Bar No. 396397

charles.burnett@troutmansanders.com

TROUTMAN SANDERS LLP

5200 Bank of America Plaza

600 Peachtree Street, N.E.

Atlanta, GA 30308-2216

(404) 885-3000 (phone)

(404) 885-3900 (fax)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RECEIVER'S EMERGENCY MOTION TO ADD RECEIVERSHIP DEFENDANT AND AMEND RECEIVERSHIP ORDER AND BRIEF IN SUPPORT THEREOF** was electronically filed with the Clerk of Court using the CM/ECF system, which automatically serves notification of such filing to all counsel of record.

This 3rd day of March, 2011.

/s/ J. David Dantzler, Jr. _____

J. David Dantzler, Jr.

Georgia Bar No. 205125

Exhibit A

The Receiver has filed an Emergency Motion to Add Receivership Defendant, to Correct Caption and Amend Receivership Order seeking to have a company known as Tiger Media, Inc. added as a defendant and included in the Receiver Estates subject to the Receivership Order. The Receiver also asks that the caption of the case, as well as the Receivership Order, be modified to change the identity of Defendant International Payphone Company to reflect its correct corporate name, International Payphone Corporation.

Having read and considered the Receiver's Emergency Motion and the parties having consented to the entry of this order, the motion is GRANTED. Accordingly,

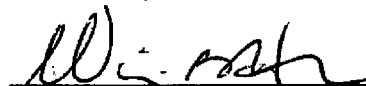
IT IS HEREBY ORDERED that Tiger Media, Inc. be added as a defendant in this action.

IT IS FURTHER ORDERED that S. Gregory Hays be and hereby is appointed as Receiver, without bond, for the estate of Tiger Media, Inc. and that the Receivership Order is hereby amended to include Tiger Media, Inc. in the Receiver Estate as defined in Section VI of that order. The Receiver shall have and possess all powers and rights to efficiently administer and manage Tiger Media, Inc. as set forth in the Receivership Order.

IT IS FURTHER ORDERED that the caption of the case be changed and that the Receivership Order be amended nunc pro tunc by replacing “International Payphone Company” with “International Payphone Corporation,” which is the correct name for that Defendant. In addition, the clerk is directed to reflect this name change on the docket.

[Signatures on following page]

SO ORDERED, this 18th day of October, 2004.



Willis B. Hunt, Jr., Judge
United States District Court for the
Northern District of Georgia
Atlanta Division

CONSENTED AND AGREED TO BY:

s/ J. David Dantzler, Jr., Esq.
Georgia Bar No. 205125
Attorney for S. Gregory Hays, Receiver
for Defendants
Mobile Billboards of America, Inc.,
International Payphone Company, and
Reserve Guaranty Trust
McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308 Telephone:
(404) 527-4660
Email: ddantzler@mckennalong.com

s/ Alex Rue, Esq. Senior Trial Counsel
Georgia Bar No. 618950
Attorney for Plaintiff Securities and
Exchange Commission
3475 Lenox Road, N.E., Suite 1000
Atlanta, GA 30326-1232
Telephone: (404) 842-7616
Email: Ruea@sec.gov

s/ Walter E. Jospin, Esq. Attorney for
Defendant Michael A. Lomas
Paul, Hastings, Janofsky & Walker LLP
600 Peachtree Street, N.E., 24th Floor
Atlanta, Georgia 30308-2222
Telephone: (404) 815-2400
Email: walterjospin@paulhastings.com

s/ Julie M. O'Daniel, Esq. Attorney for
Defendant Michael L. Young
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Telephone: (404) 881-7000 Email: