

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

FEDERAL TRADE COMMISSION
and STATE OF GEORGIA,

Plaintiffs,

v.

LAPTOP & DESKTOP REPAIR, LLC,
a Nevada limited liability company, also
d/b/a cashforiphones.com,
cashforlaptops.com, ecyclebest.com,
smartphonetraders.com, sell-your-
cell.com; and VADIM OLEGOVICH
KRUCHININ, also a/k/a Vadim
Kruchin, David Kruchin, David Vadim
Kruchin, Dave Kruch, as the owner and
an officer of Defendant Laptop &
Desktop Repair, LLC,

Defendants.

Case No. 1:16-CV-3591-AT

**MEMORANDUM IN SUPPORT OF RECEIVER'S MOTION TO EXPAND
THE RECEIVERSHIP**

I. INTRODUCTION

Since the Receiver's appointment on September 26, 2016, the Receiver has been diligently investigating the assets and liabilities of the Receivership. During

the course of its investigation, the Receiver has discovered that the ultimate owner of the building from which the Receivership Defendant conducted its business is David Kruchinin, a named Defendant herein and the owner of the Receivership Defendant. The Receiver believes and is informed that this building was acquired using assets of the Receivership Defendant, that the entity which owns the building is indebted to the Receivership Defendant in at least the principal amount of \$116,294.74 and that the Receivership Defendant has been making rent payments on this building for the benefit of Mr. Kruchinin. The Receiver requests that this Court expand the Receivership to include “Coney Island 84, Inc.” and/or “Coney Island 84, LLC” and any and all assets of this or these entities including, but not limited to real property, claims, causes of action, contract rights, leases, bank accounts and cash so that these assets can be preserved for the benefit of the Receivership Estate.

II. FACTUAL BACKGROUND

On September 26, 2016, in the Temporary Restraining Order [ECF No. 9] entered in the above-captioned case, this Court appointed a receiver (the “Receiver”) for the business activities of the receivership defendant Laptop & Desktop Repair, LLC (“LDR” or “Receivership Defendant”). The Court reappointed the Receiver in

the Stipulated Preliminary Injunction Order entered on October 5, 2016 [ECF No. 14.].

On September 29, 2016, accompanied by local law enforcement and representatives from Plaintiff Federal Trade Commission (“FTC”), the Receiver entered the Receivership Defendant’s business premises located at 84 Coney Island Drive, Sparks, Nevada (the “Coney Island Drive Building”) and took control of all of the property, assets, books and records of the Receivership Defendant located therein. Since its appointment, the Receiver has filed its First Report with this Court, has taken control of the assets and books and records of the Receivership Defendant, has commenced an investigation of the assets and liabilities of the Receivership Defendant and has otherwise carried out the duties and obligations set forth in Stipulated Preliminary Injunction Order.

This Motion is filed in furtherance of the duties and obligations assigned to the Receiver by this Court.

III. ARGUMENT AND CITATION OF AUTHORITY

Eleventh Circuit Courts regularly find that a receivership may be properly expanded to included property purchased with the funds from receivership entities. *See, e.g., SEC v. Nadel*, 8:09-cv-87-26TBM, 2013 WL 2291871, *2-3 (MD Fla. May

24, 2013) (expanding the receivership to include an additional corporate entity and all of its outstanding stocks, and including the entity within the ambit of the Court's previous orders appointing the Receiver in the case); *SEC v. Laurer*, 2009 WL 812719, at *3 (S.D. Fla 2009) (holding that the proceeds from the sale of a condominium that was maintained with tainted funds are also tainted by the fraud); *In re Fin. Federated Title & Trust, Inc.*, 347 F.3d 80 (11th Cir. 2003) (establishing constructive trust on property which was purchased with over 90% funds from Ponzi scheme). For example, in *Nadel*, the receiver sought to bring a corporate entity, whose initial funding primarily consisted of funds obtained as part of the corporate defendants' scheme, into the receivership. 2013 WL 2291871, at *2 (MD Fla. May 24, 2013). The court determined that the corporate entity did not need to be an alter ego of the defendants in order to be brought into the receivership. *Id.* The court then found that, despite the fact that not all funding for the separate corporate entity originated from the corporate defendants, it was enough that the vast majority of the initial funding in the first four months and through the following year was profits of the scheme. *Id.* The court noted that even after the corporate defendants raised funds that not tainted by the scheme, the corporate defendants did not use the additional funds to pay its obligations under the note or refund the scheme proceeds it had received. *Id.* Thus, the Court expanded the receivership to include the separate

corporate entity and all of its outstanding shares of stock, and brought the separate corporate entity within the ambit of the court's previous orders appointing the receiver in the case. *Id.*

As set forth in the Declaration of S. Gregory Hays ("Hays Dec."), which is filed contemporaneously herewith and in support hereof, the Receiver investigated the ownership of the Coney Island Drive Building in order to determine whether the Receivership Defendant had any ownership interest in that building or any claim against the owner of the building. This investigation revealed the following facts, documents and information:

1. The Coney Island Drive Building is owned by an entity known as Coney Island 84, LLC and was acquired by that entity on July 19, 2012. (Hays Dec. at Paragraph 5; Exhibit A).
2. To the best of the knowledge, information and belief of the Receiver, the only Nevada entity with the name "Coney Island 84" is a corporation for which David Kruchinin serves as the sole officer and registered agent. The Receiver could not locate a limited liability company holding this name in the Nevada records. (Hays Dec. at Paragraph 5; Exhibit B). For purposes of this pleading the owner of the building will be referred to as "CI84".

3. David Kruchinin, or his assignee, was listed as the buyer for the Coney Island Drive Building in the original purchase contract. (Hays Dec. at Paragraph 11; Exhibit D).
4. The Receivership Defendant advanced at least \$118,594.74 to CI84 and/or David Kruchinin to acquire the Coney Island Drive Building with many of these transfers specifically listed as being authorized by David Kruchinin. (Hays Dec. at Paragraphs 7 – 8; Exhibit C).
5. The books and records of the Receivership Defendant indicate that these advances were converted to a Note Payable to the Receivership Defendant in the amount of \$116,294.74 on December 31, 2012. (Hays Dec. at Paragraph 9; Exhibit C).
6. The Receiver has not located any evidence that this Note Payable was ever paid by CI84 to the Receivership Defendant. (Hays Dec. at Paragraph 10);
7. The Receivership Defendant entered into a written a lease agreement with CI84 signed by David Kruchinin both on behalf of the Receivership Defendant and CI84. (Hays Dec. at Paragraph 12; Exhibit E).
8. The Receivership Defendant routinely made rent payments in varying amounts to CI84 for the Coney Island Drive Building and the Receiver is informed and believes that these rent payments were used to either make

mortgage payments on the building or for the personal benefit of Mr. Kruchinin. (Hays Dec. at Paragraphs 13 - 16; Exhibit F).

9. The Receiver has recently paid past due insurance due on the Coney Island Drive Building because Mr. Kruchinin failed to pay the amount due. (Hays Dec. at Paragraph 18; Exhibit G).

10. The Receiver has obtained an appraisal of the Coney Island Drive Building indicating that it has a market value of \$1.3 Million against possible liabilities of approximately \$900,000. (Hays Dec. at Paragraphs 19 - 20).

In addition to the assets of the Receivership Defendant being used to acquire the Coney Island Drive Building, apparently for Mr. Kruchinin's personal benefit, there are several additional reasons to expand the Receivership to include CI84.

First, the Receivership Defendant is in possession of a large number of smartphones, computers, computer parts, furniture, fixtures, equipment and other assets which are located at the Coney Island Drive Building. The Receiver is in the process of liquidating these assets, a process which will likely take several months. The Receiver needs to have control of the Coney Island Drive Building to complete this process. (Hays Dec. at Paragraph 17).

Second, the Receiver is concerned that Defendant Kruchinin will not maintain or pay expenses related to the building. The Receiver does not know whether another

tenant located in the Coney Island Drive Building is paying rent to CI84 or Mr. Kruchinin or, if so, where those rent payments are being made. Indeed, the Receiver has already had to pay an insurance bill. (Hays Dec. at Paragraph 18). The Receiver needs to ensure that the rent payments from the other tenant are being used to preserve the Coney Island Drive Building and to make sure that this building is properly maintained and insured while the liquidation is taking place.

Third, there are currently two mortgage liens against the Coney Island Drive Building totaling approximately \$900,000. The Receiver has already been in contact with the lienholders. The Receiver is also in possession of an appraisal showing that the Coney Island Drive Building may have a market value of \$1.3 Million. The Receiver has not yet investigated the validity of the liens, but even if the liens are valid, there may be equity in the building which should inure to the benefit of the Receivership Defendant which funded both the acquisition and continuing maintenance of the building since 2012. The Receiver also believes that the rent paid by the Receivership Defendant was used to pay the outstanding mortgages.

At present there is some confusion about whether CI84 is a corporation or a limited liability company. The Coney Island Drive Building is titled in the name of Coney Island 84 LLC and the liens against it are recorded in that name. On the other hand, the bank statement at Exhibit F to the Hays Declaration uses "Coney Island

84, Inc.” and the only filing which could be located with the Nevada Secretary of State is for “Coney Island 84, Inc.”

The Receiver has not yet made a determination as to whether the failure to register the limited liability company with the State of Nevada has any effect on the legal documents relating to its ownership or liens asserted against it. Indeed, it is possible that the limited liability was properly organized. In order to be certain, however, that the Receiver has legal control of the entity which owns the Coney Island Drive Building, the Receiver does request that Receivership be expanded to include the entity named Coney Island 84 which may be either or both a corporation and a limited liability company, and any and all assets of that or those entity(ies) including, but not limited to the Coney Island Drive Building, other real property, claims, causes of action, contract rights, leases, bank accounts and cash of Coney Island 84.

Based on the evidence gathered by the Receiver to date, it seems clear that the ultimate owner of the building and beneficiary of any equity in the building, whether owned by Coney Island 84 as a corporation or a limited liability company, is David Kruchinin. As in *SEC v. Nadel*, because Defendant Kruchinin primarily funded the acquisition of the Coney Island Drive Building with the assets of the Receivership Defendant, it should be brought into the receivership.

This Court is therefore authorized to expand the Receivership to include CI84. Expanding the Receivership to include CI84 is necessary both to compensate the Receivership Defendant for prior advances made to acquire and preserve the building and to maintain the status quo while the Receiver liquidates the assets of the Receivership Defendant.

With respect to service of this Motion upon CI84, the corporate registration for CI84 lists the Registered Agent for CI84 as David Kruchinin and the Registered Office is the Coney Island Drive Building. Since Mr. Kruchinin no longer has access to the Coney Island Drive Building, the Receiver will therefore serve this Motion by first class mail upon Mr. Kruchinin at his last known address. In addition, a copy of the Motion will be specifically addressed to CI84 at the address listed in the CI84 account statement attached as Exhibit F which is also Mr. Kruchinin's last known address. Further, since the General Ledger indicates a payment was made to Robert Angres, a Reno, Nevada attorney, in connection with the acquisition of the Coney Island Drive Building, a copy of this Motion will be served upon him. Mr. Angres is also a former attorney for the Receivership Defendant and Mr. Kruchinin. Finally, the Motion will be served by first class mail upon counsel for the known lienholders.

V. CONCLUSION

For the foregoing reasons, the Receivership should be expanded to include the entity named Coney Island 84 which may be either or both a corporation and a limited liability company, and any and all assets of that or those entity(ies) including, but not limited to the Coney Island Drive Building, other real property, claims, causes of action, contract rights, leases, bank accounts and cash of Coney Island 84.

Respectfully submitted, this 3rd day of November, 2016.

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.
Henry F. Sewell, Jr.
Georgia Bar No. 636265
Counsel for the Receiver

Law Offices of Henry F. Sewell, Jr.
Suite 200, 3343 Peachtree Road NE
Atlanta, GA 30326
(404) 926-0053
hsewell@sewellfirm.com

CERTIFICATE OF COMPLIANCE

This is to certify that to the best of my knowledge this document has been prepared with one of the font and point selections approved by the Court in LR 5.1B, pursuant to LR 7. Specifically, the above-mentioned document has been prepared using Times New Roman font, 14 point.

This the 3rd day of November, 2016.

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.

Georgia Bar No. 636265

Counsel for the Receiver

Law Offices of Henry F. Sewell, Jr.
Suite 200, 3343 Peachtree Road NE
Atlanta, GA 30326
(404) 926-0053
hsewell@sewellfirm.com

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

**FEDERAL TRADE COMMISSION)
and STATE OF GEORGIA)**

Plaintiffs.)

v.)

**LAPTOP & DESKTOP REPAIR)
LLC,)
A Nevada Limited Liability)
Company, also)
d/b/a cashforiphones.com,)
cashforlaptops.com, ecyclebest.com,)
smartphonetraders.com, sell-your-)
cell.com; and VADIM OLEGOVICH)
KRUCHININ, also a/k/a Vadim)
Kruchinin, David Kruchinin, David)
Vadim Kruchinin, Dave Kruch, as the)
owner and an officer of Defendant)
Laptop & Desktop Repair, LLC,)**

Defendants

**Civil Action File No:
1:16-cv-3591-AT**

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2016, I electronically filed the foregoing Receiver’s Memorandum with the Clerk of the Court using *CM/ECF*. I also certify that the foregoing document is being served on all parties and the persons identified below

via transmission of Notice of Electronic Filing generated by *CM/ECF*, which will automatically send email notification of such filing to the counsel of record, or by causing it to be sent via First Class Mail where indicated below:

Anna Mirshak Burns
Hans Christian Clausen
Federal Trade Commission-ATL
Atlanta Regional Office
Suite 1500
225 Peachtree Street, NE
Atlanta, GA 30303-1729
Via ECF

Anne Strom Infinger
Arnall Golden & Gregory
171 17th Street NW
Suite 2100
Atlanta, GA 30363
Via ECF

Katherine Dorothy Schuessler
Georgia Department of Corrections
Legal Office
2 Martin Luther King, Jr. Drive, S.E.
Suite 870, East Tower
Atlanta, GA 30334-4900
Via ECF

Robert J. Angres, Esq.
2650 Friesian Ct.
Reno, NV 89521-6228
Via First Class Mail

Vadim Kruchinin a/k/a David Kruchin
5390 Vista Ridge Way

Reno, NV 89523-1825
Via First Class Mail

Coney Island 84, Inc.
5390 Vista Ridge Way
Reno, Nevada 89523
Via First Class Mail

Ashley L.H. Krogh
Officer and Litigation Manager, US Bank
US Bancorp Center
800 Nicollet Mall
Minneapolis, MN 55402-7020
Counsel for US Bank
Via First Class Mail

Christopher Murray, Esq.
Giuliano McDonnell & Perrone
237 West 35th Street
Suite 706
New York, N.Y. 10001
Counsel for LiftForward, Inc.
Via First Class Mail

This the 3rd day of November, 2016.

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.
Henry F. Sewell, Jr.
Georgia Bar No. 636265
Counsel for the Receiver

Law Offices of Henry F. Sewell, Jr.
Suite 200, 3343 Peachtree Road NE
Atlanta, GA 30326

(404) 926-0053

hsewell@sewellfirm.com