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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA / SANTA ANA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TLC INVESTMENTS & TRADE CO., TLC
AMERICA, INC. dba BREA DEVELOPMENT
COMPANY, TLC BROKERAGE, INC., dba
TLC MARKETING, TLC DEVELOPMENT,
INC., TLC REAL PROPERTIES, RLLP-1,
CLOUD ASSOCIATES CONSULTING,
INC., ERNEST F. COSSEY, GARY W.
WILLIAMS AND THOMAS G. CLOUD,

Defendants.

Civil Action No. SACV 00-960-DOC (EEEx)

RECEIVER'S RESPONSE TO MOTION OF
OF APPLICANTS FOR AN ORDER
LIFTING STAY ORDER OR,
ALTERNATIVELY, GRANTING
APPLICANTS LEAVE TO INTERVENE;
MEMORANDUM OF POINTS &
AUTHORITIES; DECLARATIONS OF
ROBB EVANS AND BYRON Z. MOLDO

Date: April 2, 2001

Time: 8:30 a.m.

Place: Courtroom 9-D
411 West Fourth Street
Santa Ana, CA 92701

COMES NOW ROBB EVANS, RECEIVER, who responds to the "Motion of Applicants for an Order Lifting Stay or, Alternatively, Granting Applicants Leave to Intervene Pursuant to FRCP 24" ("Motion") as follows:

1. Background.

Applicants, by their Motion, seek either (1) an order lifting the stay injunction entered by the Court on November 1, 2000 ("Stay Order") and directing the Receiver to comply with Local Rule 25.8 in all respects and administer the estate as a trustee would administer a bankruptcy estate under the Bankruptcy Code (including providing Applicants and all other creditor-investors with notice and an opportunity to be heard on matters affecting their claims and administration of the estate, and the appointment of a Creditor's Committee) or, (2) alternatively granting Applicants leave to intervene, pursuant to Rule 24 of the Federal Rules of Civil Procedure

The Receiver believes that Applicants' Motion is vague and unclear as to exactly what Applicants seek to accomplish, as their Motion is silent as to the reasons for such intervention and presents no evidence to support the Motion.

2. Applicants' Motion Does Not Comply With the Rules of this Court.

Local Rule 7.5.1 provides as follows:

MOVING PAPERS - There shall be served and filed with the notice of motion:

- (a) A brief but complete memorandum in support thereof and the points and authorities upon which the moving party will rely; and
- (b) The evidence upon which the moving party will rely in support of the motion.

Applicants' Motion is devoid of any admissible evidence. It is not supported with any declarations of investors or counsel for Applicants, correspondence or other documentation evidencing Applicants' aims in forming a committee and retaining counsel. Because Applicant has not complied with Local Rule 7.5.1(b), the Motion is procedurally deficient.

The Receiver believes the proposed intervenors seek to second-guess the Receiver's exercise of his business judgment in the administration of the Receivership Estate and this Court. While courts have, on occasion, granted motions to intervene where a complaint in intervention has not accompanied the pleading, those cases have generally dealt with parties seeking to intervene to challenge protective orders. See Beckman Industries, Inc. v. International Ins. Co., 968 F.2d 470, 474 (9th Cir. 1992) [involving Rule 24(b)] and cases cited therein. Further, where the literal terms of Rule 24(c) were not complied with, such motions "fully stated the legal and factual grounds for intervention". Id. Here that is not the case. There is no evidence in support of the Motion to Intervene. Applicants have failed to establish, as required by FRCP Rule 24(a), that their interests are not "adequately protected by existing parties", and no evidence has been provided to suggest that the Receiver's actions, which this Court has approved, justify their intervention.

Additionally, the Receiver was dismayed to note that Applicants' Motion included the names, cities of residence and amounts invested of hundreds of investor-creditors, thereby making that information a matter of public record. Since any member of the general public may view the Court's file, that information is now available to those seeking to target vulnerable individuals who have previously invested with disreputable business ventures and may do so again. (See, Declaration of Robb Evans, annexed hereto.) Since the filing of the Motion, the parties have agreed to stipulate that the investor lists should be sealed.

3. Receiver's Compliance with Local Rule 25.8

Applicants Local Rule 25.8 states: "*Except as otherwise ordered by the Court*, a receiver shall administer the estate as nearly as possible in accordance with the practice in the administration of estates in bankruptcy." [Emphasis added.] Local Rule 25.8 does not incorporate the Bankruptcy Code and Federal Rules of Bankruptcy Procedure into receivership proceedings. In this action, the Court has exercised its own discretion in instructing the Receiver to provide notice to all creditors (who number over 2,000) with regard to certain matters in specific instances. For example, the Receiver had filed his Petition to Establish a Plan to Fund Investor Hardship Requests and his Quarterly Report under seal. The Court ordered these matters unsealed and directed the Receiver to provide notice to all creditors, and the Receiver did so. Additionally, the Receiver has established a section on his website at www.robbevans.com where creditors may access regularly updated case information and download documents. The Receiver also intends to hold quarterly meetings with the creditor-investors to discuss pending issues of the Receivership proceeding and has already held two such meetings. The level of communication by the Receiver with investors has been astonishing, largely due to the Receiver's concern that investors stay informed.

The Receiver has placed Applicants' counsel on his and his counsel's service lists, and they will routinely be provided with notice of all matters relating to these proceedings (with the exception of those matters submitted under seal in accordance with the Court's Order of November 22, 2000). Additionally, the Receiver has discussed with GD&C his willingness to meet with counsel for Applicants, at their request, no more often than monthly, either at the Receiver's or his counsel's offices. (See, Declaration of Robb Evans, annexed hereto.) The Receiver respectfully submits that the procedures currently in place are appropriate. Providing notice of all matters to over 2,000 creditors would be extremely time-consuming, costly and burdensome to the Receivership Estate and would provide no apparent benefit to investors.

4. Establishment of a Creditors' Committee.

Applicants move for the appointment of a creditors' committee in accordance with their recommendation that the TLC estate be administered as a trustee would administer a bankruptcy estate under the Bankruptcy Code. However, there is nothing in receivership practice which provides for the appointment of a creditors' committee. A receiver is an officer of the court, while a trustee in bankruptcy is a statutorily created individual. While their administrative practices may be similar, their roles are not identical, and the Bankruptcy Code and Federal Rules of Bankruptcy Procedure have not been incorporated into receivership practice, nor have they been incorporated into Local Civil Rule 25.8.

Typically in receivership actions, when a receiver is appointed by the court and is represented by competent counsel, there is no reason for independent participation in the administration of the estate by creditors or stockholders, as such participation amounts to duplication of efforts of the duly authorized agents of the court. Such participation is therefore seldom compensable from Receivership Estate funds. Veeder v. Public Service Holding Corp., 29 Del Ch 396, 51 A2d 321, affd 31 Del Ch 499 70 A2d 22. 16 Fletcher Cyc. Corp. § 7918.10 (perm. ed. rev. vol. 1998).

In bankruptcy actions, 11 U.S.C. § 705 provides that creditors' committees may consist of not fewer than three, and not more than eleven, creditors. 11 U.S.C. § 331 provides that professional persons employed under 11 U.S.C. § 1103 (including attorneys for committees) may seek compensation from the bankruptcy estate. Gibson, Dunn & Crutcher, LLP ("GD&C"), counsel for Applicants has indicated that it would seek compensation from the Receivership Estate, as counsel for a creditors' committee would be so compensated in a bankruptcy action. (See, Declaration of Byron Z. Moldo attached hereto.) The Receiver is concerned that this would prove extremely costly to investors, many of whom have not retained GD&C as their counsel, and would deplete funds which would otherwise be available for redress.

5. Intervention in Receivership Proceedings.

The burden is on the prospective intervenor to demonstrate that the conditions for intervention are satisfied. Petrol Stops Northwest v. Continental Oil Co., 647 F.2d 1005, 1010, Fn. 5 (9th Cir. 1981). Here Applicants have not met their burden, as the Motion is not supported by any admissible evidence.

It is the general rule that whether or not a party shall be permitted to intervene in a receivership proceeding is within the discretion of the Court. 16 Fletcher Cyclopedic of Private Corp. § 7751 (perm. ed. rev. vol. 1998). Some courts do not consider receivership proceedings "actions" under rules permitting intervention and therefore do not allow intervention in receivership proceedings under such rules. Ainsworth v. Old Security Life Ins. Co., (1985) 685 SW2d 583 (Mo. App). In Ainsworth, the lower court denied a sole stockholder's application to intervene in a receivership, and the stockholder appealed. The Court of Appeals held that intervention rule did not authorize intervention in receivership.

In Ainsworth, applicant ISC sought to intervene in the receivership as a formal party, claiming to be entitled as a matter of right to intervene by virtue of Supreme Court Rule 52.12(a). Supreme Court Rule 52.12(a) is virtually identical to FRCP Rule 24(a), except that Supreme Court Rule 52.12(a)(1) refers to a statute of "this state" as opposed to "the United States" in FRCB 24(a)(1). FRCP Rule 24(a) provides:

Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The Ainsworth court found:

We do not think that Rule 52.12(a) gives ISC any right of intervention in a *receivership*, as opposed to the ancillary proceedings listed above. Our reason for so holding is that a receivership is not an action to which Rule 52.12(a) applies. What ISC is seeking here is the right to have notice and the right to be heard and to participate in every matter coming before the receiver for decision. It seeks an advance

ruling that it is entitled to intervention in every case or matter involved in the receivership. That at least is how we understand the appellant's request for intervention, and how we understand the practical operation of plenary intervention in the receivership.

...

It has been held, on the other hand, in *Fischer v. Sklenar*, 101 Neb. 553, 163 N.W. 861, 865 (1917) that "[t]he word 'actions' is not usually considered to include such proceedings as the settlement of estates, the probate of wills, or the distribution of property, though proceedings ancillary thereto may partake of the nature of actions...." We think this quotation is a correct view of the law, and that the administration of receivership estates is not an action in which Rule 52.12 gives a right of intervention.

In holding that a receivership proceeding taken as a whole is not an "action", and that the intervention rule does not apply, we give the rule a practical as well as a technical application. There are hundreds, even thousands, of actions which must be taken by the receiver in the administration of a complicated receivership estate. Most of them are not "adversary civil proceedings" [citations omitted] and partake more of the nature of routine business affairs than of litigation. In many of the adversary proceedings in which the receiver may be involved, perhaps in most of them, the interests of the receiver and of ISC would be identical and ISC's interest would be "adequately represented by existing parties". If this is not true in every case or matter which the receiver is called upon to deal with, it does not follow that ISC is entitled to become a formal party to the whole receivership proceeding and to every matter involved therewith. ISC asks too much when it asks to be made a party to the receivership itself. It would too much encumber the receivership proceeding. . . [.]

The Court in Elkins et al. v. First National Bank of New York, et al. (1930) 43 F.2d 777 previously took a similar view, stating: "It is not the ordinary or the proper procedure in a receivership proceeding to allow claimants who can have their controversies settled before a master with right of review by the court, to be made parties to the original cause and thus complicate the issues there involved." Acme White Lead & Color Works v. Republic Motor Truck Co. (D.C.) 285 F. 88; Jones & Laughlin v. Sands (C.C.A. 2d) 79 F. 913; Sands v. Greeley Co. (C.C.) 80 F. 195. The Court in Elkins went on to state:

Ordinarily, whether or not such intervention shall be allowed is a matter resting within the sound discretion of the District Judge. Board of Drainage Com. V. Lafayette Southside Bank (C.C.A. 4th) 27 F.(2d) 286. And under the circumstances here there can be no question that, in denying the intervention, the discretion of the judge was properly exercised.

After the appointment of a trustee in bankruptcy or a receiver with power to collect unpaid subscriptions, creditors cannot maintain independent actions or proceedings for that purpose, unless for any reason the receiver or trustee does not or cannot do so. 13 Fletcher Cyc. Corp. (perm. ed. rev. vol. 1995) § 6121.

The proposed Complaint-in-Intervention prays for relief in the form of (1) damages in an amount subject to proof; (2) for an order rescinding any purported sale of securities by the TLC Defendants and ordering them to return an amount equal to the sums invested, plus interest; (3) for punitive damages; (4) for costs and expenses of suit, and (5) such other and further relief as the Court deems just and proper. The Receiver respectfully submits that such intervention is improper and would unduly complicate the instant action, and that Applicants' interests are adequately represented by existing parties.

6. Conclusion.

It is the Receiver's opinion that the Court has exercised sound discretion in determining which matters shall be filed under seal; which matters shall be unsealed, and when notice must be given to all creditors of particular matters. Additionally, the Receiver and his staff have maintained a website with readily available and current information about the case, and they speak with investors on a daily basis. The Receiver believes that the systems and procedures currently in place, which this Court has approved, are appropriate and that no creditors have been denied their rights. The Receiver does not agree that "more meaningful participation" by Applicants in the Receiver's administration of the estate is necessary or appropriate and may in fact prove to be extremely oppressive. However, absent an evidentiary

showing by Applicants as to what they actually seek to accomplish by gaining the relief sought in their Motion, the Receiver can only speculate as to the possible outcome.

The Receiver welcomes Applicants' involvement in the case, as well as that of their counsel, GD&C. By way of example, on March 6, 2001, the Court granted the Receiver's proposed Plan to Fund Investor Hardship Requests, with the directive that GD&C be involved in the administration of the Plan and that it be entitled to review requests submitted by investors. The Receiver believes that GD&C's participation in the action might be beneficial in terms of monitoring case activities and providing clarification to Applicants regarding the overall process. However, the Receiver opposes compensation of GD&C by the Receivership Estate, as he believes that such compensation is improper and would be unduly burdensome and expensive to the Receivership Estate and its creditors.

DATED: March 19, 2001

DRESSLER REIN EVANS & SESTANOVICH
LLP

<signed>

By: _____
BYRON Z. MOLDO,
Attorneys for Robb Evans, Receiver

DECLARATION OF ROBB EVANS

I, ROBB EVANS, declare as follows:

1. I am the duly appointed, qualified and acting Permanent Receiver in the within action. I have personal knowledge of the matters set forth in this declaration, and if called as a witness, I could and would competently testify thereto.

2. I have reviewed the "Motion of Applicants for an Order Lifting Stay or, Alternatively, Granting Applicants Leave to Intervene Pursuant to FRCP 24" ("Motion"). I believe that the Motion is vague and unclear as to exactly what Applicants seek to accomplish, as the Motion is devoid of any admissible evidence. I believe that the granting of the relief sought, either by intervention or modification of the current noticing process, would cause the Receivership Estate to incur substantial and unnecessary costs, and would not provide any meaningful benefit to investors.

3. The Motion does not state with specificity what the Applicants want. There are no declarations by anyone indicating that they are uninformed or are being denied the opportunity to "meaningfully participate" in the administration of this case. The only instance of any investor complaining of denial of "meaningful participation" is the matter of one broker, whom, I believe, initiated the string of actions commencing with her disappointment about my lack of enthusiasm for her various proposals regarding annuity swaps, resulting in her retention of Attorney Weed, his filing of a motion to intervene, which motion was later withdrawn, and the present motion filed by GD&C which is before the court. In fact, the level of communication with investors by my office has been as high as in any receivership of which I am aware. My staff and I have personally spoken to or corresponded with approximately hundreds, if not thousands, of investors. No investor has ever told me that he or she is uninformed or lacks information regarding the status of the Receivership Estate, although many have expressed confusion by the continuing saga of the Kryder/Weed/Gibson Dun efforts turn the Receivership in the direction they advocate.

4. On November 9, 2000, I filed my Second Status Report with the Court. The Court made certain modifications to the Second Status Report, which was ultimately approved pursuant to an Order entered November 22, 2000. The Court's November 22, 2000 also provided procedures by which certain matters would be filed under seal. After entry of the November 22, 2000 Order, my staff and I established procedures to comply with the Court's Order, and those procedures have been firmly established for four months.

5. In this action, the Court has exercised its discretion in instructing me to provide notice to the over 2,000 creditors with regard to certain matters in specific instances. For example, I filed a Petition to Establish a Plan to Fund Investor Hardship Requests and my Quarterly Report under seal. The Court ordered these matters unsealed and directed me to provide notice to all creditors, which I did. Additionally, I established a section on my website, at www.robbevans.com, where creditors anyone may access regularly updated case information and download documents. I also intend to conduct aI have conducted quarterly meeting with creditor-investors to discuss pending issues of the Receivership proceeding and intend to continue doing so. Over three hundred and fifty investors have attended those meetings.

6. It is my belief that GD&C is being paid by former TLC brokers and instructed by them and /or their closely allied investors, rather than taking direction and instruction from non-broker related investors. I believe that there are criminal investigations in process against several brokers in various jurisdictions. My concern is theis the possibility that one objective of the Motion may be an attempt by certain brokers to minimize prison sentences by mitigating their involvement and reducing testimony against them by investors. My concern is that action being taken supposedly for the benefit of the victims could be misleading -- that such action in fact is, in part, intended to benefitto benefit brokers at the expense of the victims.

7. In my opinion, both the prior Motion to Intervene and the Motion pending before the Court have confused some investors and have been a distraction distraction and additional expense to estate administration. My counsel, my staff and I have invested hundreds of hours dealing with these issues which, in my opinion, were unnecessary and, in fact, are little more than a campaign by several brokers for their own benefit. That time could otherwise have been spent recovering assets for the benefit of investors.

8. With regard to GD&C's fees, I vehemently oppose leaving open the possibility that GD&C be paid from funds in the Receivership Estate whichEstate that would otherwise be available for investors. I want to ensure that all investors are treated fairly and equally, whether or not they have retained counsel. GD&C does not represent all investors in this action. I would welcome GD&C's participation to the extent that it is retained to recover and is successful in recovering funds in addition to those collected by me. I also believe GD&C's involvement might be beneficial in terms of monitoring case activities and providing clarification to Applicants regarding the overall process.

9. I am concerned that some of those listed as having retained GD&C either may not have knowingly done so or have done so without knowledge of the issues. I have confidence of the integrity of G.D.&C and know they would not knowingly misrepresent their client list. However, I am aware of the pressure that some agents have brought on investors, many frail and unsophisticated. I am also aware of how difficult it would be for GD&C to conduct interviews with the hundreds of people named in the short time since they joined Attorney Richard Weed in this effort. I am influenced in my view by a number of communications from many investors who were listed in the proposed filings to which this action has succeeded who have informed me that their name was listed in Mr. Weed's proposed filings and that they definitely did not sign up with him, as requested by their agent. Others indicated that they had signed up with Mr. Weed based upon representations and urging of their agent and have indicated they wish to terminate that relationship. While I am happy to deal with valid counsel for any investor, and am, in fact, doing so in a number of instances, I want to be sure that engagements are proper. I would therefore request that, if GD&C is permitted to participate in this case that they get engagement letters from their clients, following their firms established procedures for taking on new clients for each investor named.

10. I have placed Applicants' counsel on my and my counsel's service lists, and they will be routinely be provided with notice of all matters relating to these proceedings (with the exception of those matters submitted under seal in accordance with the Court's Order of November 22, 2000). Additionally, I have discussed with GD&C my intention willingness to meet with Applicants' counsel, at their request, no more often than monthly, at either my or my counsel's offices. I believe that the procedures currently in place are appropriate. Providing notice of all matters to over 2,000

creditors would be extremely time-consuming, costly and burdensome to the Receivership Estate and would provide no apparent benefit to creditors.

11. Since my appointment I have refused many attempts to obtain information about victims from third parties. It is well established that fraudsters actively seek lists of those defrauded and investment details so that they can be targeted for another scam. I was, therefore, dismayed to note that the Motion included the names, cities of residence and amounts invested of hundreds of investor-creditors, thereby making that information a matter of public record. Since any member of the general public may view the Court's file, that information is now available to those seeking to target vulnerable individuals who have previously invested with bogus business ventures and may do so again. Since the filing of the Motion I have pointed this out and my understanding is that the parties have agreed to stipulate that the investor lists should be sealed. However, at the time of my signing this document that has not, to my knowledge, been accomplished.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 19th day of March, 2001, at Sun Valley, California.

<signed>

ROBB EVANS

DECLARATION OF BYRON Z. MOLDO

I, BYRON Z. MOLDO, declare as follows:

1. I am a member of Dressler Rein Evans & Sestanovich, LLP, counsel for Robb Evans, Receiver in the within action. I have personal knowledge of the matters set forth in this declaration, and if called as a witness, I could and would competently testify thereto.

2. Since 1994, I have been a member of the Panel of Bankruptcy Trustees for the Central District of California. I currently act as Trustee in both Chapter 7 and Chapter 11 matters in the Central District. I represented Receivers in hundreds of cases, and I am a Court-appointed Receiver in four (4) cases currently pending before the United States District Court for the Central District of California.

3. I have reviewed the "Motion of Applicants for an Order Lifting Stay or, Alternatively, Granting Applicants Leave to Intervene Pursuant to FRCP 24" ("Motion"). I am also familiar with Local Civil Rule 25.8, which states that, except as otherwise ordered by the Court, a receiver shall administer an estate as nearly as possible in accordance with the practice in the administration of estates in bankruptcy. My understanding of Local Rule 25.8 is that it directs receivers to administer estate assets, including obtaining the best and highest prices, and administering creditor claims in a similar manner as bankruptcy trustees administer estates. The Local Rules do not incorporate the Bankruptcy Code or Federal Rules of Bankruptcy Procedure into receivership proceedings.

4. In my over 18 years of experience as counsel to Receivers and as a Receiver, I have not been involved in a receivership proceeding in which a court-approved creditors' committee existed.

5. Local Bankruptcy Rule 7004 limits notice requirements for motions in bankruptcy actions to the 20 largest creditors of a bankruptcy estate. If the Court grants Applicants' Motion and directs the receiver to notice all creditors, the Receiver will immediately prepare and file a motion to limit notice requirements, due to the costs associated with

noticing, copying and mailing to over 2,000 creditors. From a practical standpoint, this would be the action taken by any prudent bankruptcy trustee in order to limit costs in a bankruptcy estate.

6. On March 6, 2001, I spoke with Joseph P. Busch, III, of Gibson, Dunn & Crutcher, LLP ("GD&C"), counsel for Applicants herein. I asked Mr. Busch if GD&C would agree not to seek payment of its fees from the Receivership Estate. Mr. Busch's response was that GD&C was not prepared to make that agreement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 19th day of March, 2001, at Los Angeles, California.

<signed>

BYRON Z. MOLDO
