

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY
AS RECEIVER FOR ARTHUR LAMAR
ADAMS AND MADISON TIMBER
PROPERTIES, LLC,

Plaintiff,

v.

MICHAEL D. BILLINGS and
MDB GROUP, LLC; TERRY WAYNE
KELLY, JR. and KELLY
MANAGEMENT, LLC; and WILLIAM
B. MCHENRY, JR. and FIRST SOUTH
INVESTMENTS, LLC,

Defendants

Case No. 3:18-cv-679-CWR-FKB

Arising out of Case No. 3:18-cv-252,
Securities and Exchange Commission
v. Arthur Lamar Adams and Madison
Timber Properties, LLC

Hon. Carlton Reeves, District Judge
Hon. F. Keith Ball, Magistrate Judge

**MEMORANDUM BRIEF OF DEFENDANTS MICHAEL
BILLINGS AND MDB GROUP, LLC IN OPPOSITION TO
RECEIVER'S MOTION FOR SUMMARY PROCEEDINGS**

Michael D. Billings and MDB Group, LLC submit this Memorandum Brief in support of their Response [**Dkt. 18**] in opposition to the Motion for Entry of Scheduling Order for Summary Proceedings (the "Motion") [**Dkt. 5**] filed by Alysson Mills (the "Receiver"), in her capacity as Receiver for Arthur Lamar Adams and Madison Timber Properties, LLC.

BACKGROUND

Mike Billings ("Mr. Billings") first met Lamar Adams ("Adams") in 2012. Around the time of their first meeting, Adams told Mr. Billings that Adams's company, Madison Timber Properties, LLC ("MTP"), was looking to meet individuals who might be interested

in participating with him in providing loans to MTP so that MTP could enter into profitable timber arrangements between landowners and undisclosed timber mills. Over the next six years, Mr. Billings introduced Adams and MTP to several of Mr. Billings's personal friends, all of whom were financially sophisticated, and many of whom decided to join Adams and others and lend money to MTP to enter into these timber transactions. At all times during Mr. Billings's association with Adams, both Adams and MTP were surrounded by and doing business with well-regarded and successful businesses, banks, and law firms. At no point did Mr. Billings notice any wrongdoing or any warning signs of wrongdoing on the part of Adams or MTP. To the contrary, each representation made by Adams appeared to be backed by objective factors of legitimacy, and the terms of each loan transaction of which Mr. Billings ever had any knowledge were honored each time and as to each lender introduced by Mr. Billings to Adams and MTP.

On May 1, 2018, the U.S. Attorney for the Southern District of Mississippi charged Adams with one count of bank fraud and one count of wire fraud. About that same time, the Securities and Exchange Commission also brought a civil suit against Adams alleging a variety of securities violations for Adams running MTP as a Ponzi scheme. Shortly after he was charged, Adams entered into a plea agreement for the one count of wire fraud arising out of an episode of illegal conduct from November 28-29, 2017. As a condition of his plea deal, Adams was required to make a full admission that he ran MTP as a Ponzi scheme. Adams made that admission at his plea hearing on May 9, 2018.

Several related proceedings have commenced as a result of the U.S. Attorney's and SEC's investigations into Adams and MTP. This case is one of them.

On June 1, 2018, this Court entered an order [**Dkt. 26**] establishing an application process for the appointment of a receiver over Adams's and MTP's assets. On June 22, 2018, the Court selected Alysson Mills as Receiver and gave her immediate authority to perform whatever actions were necessary to protect and maximize the value of the receivership estate [**Dkt. 33**].

The Receiver's first contact with counsel for Mr. Billings came on July 6th, just two weeks after her appointment. Mr. Billings and his counsel made immediate offers to travel to New Orleans, where the Receiver's office is located, to discuss the case and the possibility of resolution without the need for litigation. The Receiver and her attorneys finally agreed to meet on July 26, at which time counsel for Mr. Billings suggested the broad terms of a proposed path to resolution of the Receiver's purported claims as to Mr. Billings.

Counsel for the Receiver agreed to take Mr. Billings's proposal under advisement. However, counsel also stated that the Receiver could not possibly respond to the proposal until after the Receiver had submitted her first report to the Court on August 22, 2018. Counsel for Mr. Billings waited until after the filing of the Receiver's report, then again attempted to meet and resume settlement talks with the Receiver. Counsel for the Receiver finally agreed to meet in Jackson on September 20.

At that second meeting, it became clear to counsel for Mr. Billings that the Receiver had little interest in a good faith effort to negotiate a resolution. The Receiver instead handed counsel for Mr. Billings for the first time a draft of a scathing complaint, rife with factual inaccuracies, along with the threat to file it if, within five days, Mr. Billings did not accede to the following demands of the Receiver:

1. That he summarily waive his procedural rights with respect to discovery, motion practice and trial of the issues in the case;
2. That he agree to an injunction preventing the spending of any money above an aggregate total of \$7,500 for his ongoing living expenses; and
3. That he agree to an arbitrary limitation of 15 days for the conclusion of settlement negotiations.

Despite several requests by counsel for Mr. Billings, the Receiver and her team of lawyers refused simply to agree to a reasonable timeframe of at least thirty days for good faith negotiations to determine whether the parties could resolve their differences. The Receiver also took the position that she had to sue Mr. Billings at the same time she sued defendants Kelly and McHenry, despite the fact that Mr. Billings is a Dallas resident who only came to know Adams in recent years, as opposed to Kelly and McHenry, who were physically present in Madison, Mississippi and intimately involved in the day-to-day operations of MTP with Lamar Adams.

On October 1, over one hundred days after being appointed and without ever agreeing to attempt substantive settlement discussions, the Receiver moved Mr. Billings to the top of her hitlist and filed her inaccurate complaint. Remarkably, among her allegations are assertions that Mr. Billings refused to agree to her demands that he waive his rights before this Court.

At the same time, the Receiver filed the current Motion, asking the Court to disregard the Rules and truncate this litigation in a manner clearly designed to try to coerce Mr. Billings into a position in which he could not fairly protect his own rights and present his own case.

For example, the proposed scheduling order included with the Receiver's Motion does not even provide Mr. Billings with the right to take discovery, unless he can first convince the Court to grant leave to seek discovery. And this arrangement was demanded by the Receiver as a condition of entering into settlement negotiations, despite the fact that Mr. Billings (1) has not had the chance to depose Adams, Kelly or McHenry, (2) has not had the chance to obtain documentation of the various loans extended by those whom he introduced to Adams, (3) has not had the opportunity to examine MTP's business records, and (4) has not had the opportunity to examine the bases for the Receiver's calculations or depose her accountants.

The Receiver is requesting that this Court strip Mr. Billings of his rights under the Rules so she can purportedly "resolve her claims with minimal time and expenses."¹ But that camouflage is shown for what it is when seen in light of the fact that counsel for Mr. Billings made repeated attempts to engage in settlement discussions with the Receiver over the hundred days since her appointment. Moreover, if the Receiver genuinely believed that there was an imminent risk that Mr. Billings would dissipate assets of the Estate to an extent requiring injunctive relief and a short-circuited scheduling order, she would have asked the Court for relief long before now.

Mike Billings deeply regrets ever meeting Adams and ever being associated with MTP, and he is mortified that he has put his friends in harm's way. But Mr. Billings is now a defendant in a civil case; he has not been accused of any criminal behavior. He could not in good conscience submit wanly to the coercive demands of the Receiver and waive his

¹ Dkt. 6 at p. 2.

procedural protections in order to keep the Receiver from trying to shame him in the public spotlight. Mr. Billings is entitled to fair treatment, and has full confidence that is what he will receive from this Court, notwithstanding the unwillingness of the Receiver to act accordingly.

STANDARD

“Due process essentially requires that the procedures be fair.” *In re Murchison*, 349 U.S. 133, 136 (1955). And while “the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership,” *SEC v. Great White Marine & Recreation, Inc.*, 428 F.3d 553, 556 (5th Cir. 2005) (internal citation omitted), “[s]ummary proceedings are inappropriate when parties would be deprived of a full and fair opportunity to present their claims and defenses.” *SEC v. Elliott*, 953 F.2d 1560, 1567 (11th Cir. 1992).

ANALYSIS

The Receiver’s Motion and proposed scheduling order ask this Court to strip Mr. Billings of his ability fairly to make his case and to defend his interests against claims that could result in him losing everything he has. The stakes might not be that high for every defendant the Receiver sues, but they are that high for Mr. Billings.

In reviewing the Receiver’s proposed procedural shortcuts, the Court might well observe this cautionary guidance from the Eleventh Circuit: “While the term ‘summary’ connotes that the procedure [is] abbreviated, it does not mean that the parties [should] receive[] no procedure at all.” *SEC v. Elliott*, 953 F.2d 1560, 1567 (11th Cir. 1992). Keeping this legal principle — and the stakes of this case — in mind, the Receiver has asked this Court to enter a scheduling order that pays only the slightest heed to the procedural rights of Mr. Billings. If she has her way, the Receiver will file a motion for summary

judgment. Then the parties will exchange initial disclosures within seven days of the filing unless initial disclosures are waived. Mr. Billings will then have three weeks to respond to her summary judgment motion—including asking permission of the Court to conduct the discovery Mr. Billings needs in order to make out his defenses. The Receiver then gets two weeks to file a reply opposing the requested discovery, which issue would have to be argued before the Court. A final hearing on the merits would then be conducted, *all within 60 days of the filing of the Receiver's motion for summary judgment.*

Sixty days to judgment, with no discovery for Mr. Billings, unless he is successful in persuading the Court to grant him leave to conduct limited discovery — this statement fairly summarizes the procedure being pushed by the Receiver. Small claims in county court provide for a fairer process than this, but according to the Receiver, this plan provides Mr. Billings enough protection to allow her lawfully to take everything Mr. Billings has to his name.

There is little doubt that Mr. Billings is already starting out this case well behind the curve. The Receiver likely has access to the incredibly comprehensive document and ESI production that Mr. Billings has already made under subpoena to the SEC—which contains far more data and information than the Receiver would otherwise be entitled to under the scope of discovery in Fed. R. Civ. P. 26. On top of possessing Mr. Billings's information, the Receiver likely has reviewed every document, record, and communication ever sent to or from Adams and MTP by any bank, any timber owner, every lumber mill and every lender.

This Court need look no farther than to its sister court in the Northern District of Texas, also in the Fifth Circuit, as to the Rules and procedures that court has employed in *Janvey v. Alguire, et al.*, a pending case with claims very similar to those presented in this

case by the Receiver. *Janvey v. Alguire, et al.*, Case 3:09-cv-00724-N-BQ (N.D. Tex.). The *Janvey* receivership cases are a result of a Stanford Bank Ponzi scheme, which involved the sales of fraudulent investor CDs.

In *Janvey*, the receiver filed fraudulent transfer suits against brokers and employees who received commissions for selling CDs to outside investors. *Id.* at Dkt 24. The receiver there also filed a motion for an order establishing summary proceedings. *Id.* at Dkt 16. Instead of granting perfunctory procedures, though, the sister court in *Janvey* has relied upon the Rules of Civil Procedure to allow defendants situated similarly to Mr. Billings a fair opportunity to defend themselves from the Receiver's claims. Following is a summary of the *Janvey* court's most recent scheduling order, entered on June 4, 2018:

1. Unrestricted fact discovery was extended an additional four months, through October 12th. *Id.* at 2649 at ¶ 3(a).
2. Each party looks to Fed. R. Civ. P. 26(a)(2) as to disclosures regarding their respective opposing and rebuttal experts. *Id.* at 2649 at ¶ 3(c).
3. The motion deadline, including motions for summary judgment, was extended by nearly five months. *Id.* at 2649 at ¶ 3(g).
4. A two-week trial was set on the court's docket for April 8, 2019.
Id. at 2649 at ¶ 4.

And further, just last week on October 17th, the court had to enter an order compelling the receiver to produce documents and communications which were being withheld from the defendants. *Id.* at Dkt. 2963.

Janvey was filed well over nine years ago, and the case against Mr. Billings before this Court is only three weeks old—Mr. Billings's Answer to the Receiver's claims in her

newly Amended Complaint is not even yet due. The Receiver here asks this Court for a process that will hand her a judgment by the end of 2018, four months before the court in *Janvey* hosts a two-week trial on similar claims asserted against similarly situated defendants.

The contrast between the fair process employed in *Janvey* versus the shortcuts sought by the Receiver in this case is compelling, particularly since that case is on the docket of a sister court in the Fifth Circuit. The Receiver has provided the Court with no authority such as *Janvey*, nor did the Receiver offer any case with claims such as the ones before the Court. The Receiver's citation to general propositions of receivership law does not afford her a sweeping exception to the general applicability of the Rules of Civil Procedure.

CONCLUSION

To his great regret, Mr. Billings became associated with a man who operated what appeared to all the world to be a well-regarded company, but was secretly designed to defraud even highly sophisticated business people out of their money. The Receiver in this case is now after everything Mr. Billings owns, and he should not be required to defend himself against the sophisticated, fraudulent actions of another man and a court-empowered Receiver by the limited means of a 60-day summary proceeding. The Rules exist for a reason, including circumstances exactly such as this. Mr. Billings should be granted the time and procedural resources necessary to investigate and conduct discovery in order to make meaningful showings on the legal defenses to which he is entitled.

The Receiver has determined that she would rather litigate than negotiate. But she should not be allowed to dictate the terms of the litigation as she tried to dictate the terms of any settlement discussions.

The Court should deny the Receiver's Motion and enter a scheduling order in the ordinary course of the proceedings of this case, providing Mr. Billings with a full and fair opportunity to defend himself under the Rules and the law against the allegations asserted against him.

Respectfully submitted, this the 23rd day of October, 2018.

MICHAEL D. BILLINGS and MDB GROUP, LLC
Defendants

By: /s/ R. Andrew Taggart, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2018 I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants: NONE.

SO CERTIFIED, this the 23rd day of October, 2018.

/s/ R. Andrew Taggart, Jr.
R. ANDREW TAGGART, JR.