

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

v.

ARTHUR LAMAR ADAMS AND
MADISON TIMBER PROPERTIES, LLC

Defendants.

Case No. 3:18-cv-252

Hon. Carlton W. Reeves, District Judge

Hon. F. Keith Ball, Magistrate Judge

PROPOSED ORDER APPROVING SETTLEMENT

Before the Court is the Motion for Approval of Proposed Settlement with First Valley National Corp. and its wholly owned subsidiary First National Bank of Clarksdale (“FNBC”) filed by Alysso Mills, in her capacity as the court-appointed receiver (the “Receiver”) for Arthur Lamar Adams (“Adams”) and Madison Timber Properties, LLC (“Madison Timber”).

The motion asks the Court to approve the Receiver’s proposed settlement with FNBC. In exchange for the Receiver’s and Receivership Estate’s release of any claims against FNBC arising from FNBC’s banking relationship with Adams and Madison Timber and any role that FNBC may be alleged to have had in the Madison Timber Ponzi scheme (which FNBC denies) and a channeling injunction, FNBC agrees to make a cash payment of \$4,000,000.00 to the Receiver and provide the Receiver with a 60 day “Tender Period” from the “Effective Date” of the Settlement Agreement within which the Receiver may satisfy all outstanding loans by FNBC to Oxford Springs, LLC (“Oxford Springs”), on which \$4,552,113 is currently owed, by making a lump sum payment of \$4,000,000.00 to FNBC.

After notice and hearing, and after having considered the filings and arguments of counsel, the Court **GRANTS** the motion.

BACKGROUND

The Receiver’s duties

The Receiver has a duty “to take custody, control, and possession of all Receivership Property, Receivership Records, and any assets traceable to assets owned by the Receivership Estate” and to investigate and “bring such legal actions based on law or equity in any state, federal or foreign court as the Receiver deems necessary or appropriate in discharging her duties as Receiver.”¹

¹ Docket No. 33, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-252 (S.D. Miss).

Oxford Springs

“Receivership Property” and “assets owned by the Receivership Estate” include Adams’s, and now the Receivership Estate’s, interest in Oxford Springs.

Oxford Springs is a Delaware limited liability company formed in 2014. Its sole asset is approximately 2,400 acres of undeveloped land in Lafayette County, Mississippi. It purchased the property with the intent to develop an upscale neighborhood with an equestrian park and golf course near Oxford, Mississippi. There has been no actual development on the property.

The Receivership Estate owns Adams’s 47.5% interest in Oxford Springs. Of the remaining interests, Patrick Sands owns 47.5% and Mike Billings owns 5%.

FNBC

FNBC holds two deeds of trust over Oxford Springs’s property. Oxford Springs purchased the property in two separate transactions and for each obtained a loan from FNBC:

Oxford Springs purchased the first approximately 2,300 acres (“Parcel 1”) on April 29, 2015 for \$5,158,031.54. In connection with that purchase, it borrowed \$4,224,812 from FNBC, and FNBC obtained a deed of trust over the approximately 2,300 acres as well as personal guarantees from Adams and Sands.

Oxford Springs purchased the additional approximately 100 acres (“Parcel 2”) on September 23, 2016 for \$1,000,000. In connection with that purchase, it borrowed \$1,000,000 from FNBC, and FNBC obtained a deed of trust over the approximately 100 acres as well as personal guarantees from Adams and Sands.

FNBC’s loans to Oxford Springs are cross-collateralized, and the current total balance is \$4,552,113.

Attempted sale

Oxford Springs entered a contract to sell Parcels 1 and 2 earlier this year. That sale failed after the buyer declined to purchase Parcel 2 and sought to adjust the purchase price accordingly. Oxford Springs could have sold only Parcel 1 to the buyer, but after paying off FNBC's loans and other debts and dividing what remained among Oxford Springs's members, the Receivership Estate would have received little, if any, proceeds from the sale. The Receiver refused to sell under those circumstances.

The failed sale caused the Receiver's counsel to reassess the Receivership Estate's options. Oxford Springs's property is valuable and can be sold for several millions of dollars, but no sale will meaningfully benefit the Receivership Estate so long as it must first pay off FNBC and Oxford Springs's other members. To maximize Oxford Springs's value to the Receivership Estate, the Receiver's counsel devised a plan to own 100% of Oxford Springs and to sell its property free and clear of Oxford Springs's debt to FNBC.

The Receiver's negotiations—FNBC

Oxford Springs owes FNBC \$4,552,113.

Separately, FNBC was one of Madison Timber's multiple banks and is a likely defendant in a lawsuit by the Receivership Estate. The Receiver presented FNBC with a draft complaint asserting claims arising from FNBC's banking relationship with Adams and Madison Timber and any role that FNBC may be alleged to have had in the Madison Timber Ponzi scheme (which FNBC denies).

After thoughtful negotiation, FNBC agreed to make a cash payment of \$4,000,000.00 to the Receiver and provide the Receiver with a 60 day "Tender Period" from the "Effective Date" of the Settlement Agreement within which the Receiver may satisfy all outstanding loans by

FNBC to Oxford Springs, on which \$4,552,113 is currently owed, by making a lump sum payment of \$4,000,000.00 to FNBC in exchange for the Receiver's release of any claims against FNBC arising from FNBC's banking relationship with Adams and Madison Timber and any role that FNBC may be alleged to have had in the Madison Timber Ponzi scheme (which FNBC denies) and a channeling injunction.

The Receiver's negotiations—Sands

Sands owns a 47.5% interest in Oxford Springs and is a guarantor of FNBC's two loans to Oxford Springs.

Separately, Sands was a Madison Timber investor and is a likely claimant of the Receivership Estate to the extent he still holds outstanding Madison Timber promissory notes.

Sands agreed to convey to the Receivership Estate his 47.5% interest in Oxford Springs and also release the Receivership Estate of any claim by him to amounts due under his outstanding Madison Timber promissory notes in exchange for the Receiver's obtaining from FNBC a release of his guarantees of FNBC's loans to Oxford Springs. Simultaneously with the filing of her motion to approve her proposed settlement with FNBC, the Receiver filed a motion to approve the Receiver's proposed settlement with Sands.

The Receiver's negotiations—Billings

Billings owns a 5% interest in Oxford Springs.

Billings is a defendant in the lawsuit styled *Alysson Mills v. Michael D. Billings, et al.*, No. 3:18-cv-679 (S.D. Miss.), in which the Receiver alleges he received millions of dollars in "commissions" in exchange for his recruitment of new investors to Madison Timber. On July 9,

2019, the Receiver filed a motion for approval of a proposed settlement with Billings.² As part of that proposed settlement, Billings agreed to convey to the Receivership Estate his 5% interest in Oxford Springs. As of this filing, the Court has not approved the proposed settlement.

Intended result

Through the proposed settlements with FNBC, Sands, and Billings, the Receivership Estate will own 100% of Oxford Springs and can sell its property free and clear of Oxford Springs's debt to FNBC. The proceeds of a future sale will go entirely to the Receivership Estate.

The proposed settlement with FNBC

The Receiver and FNBC have undertaken thoughtful negotiations and the Receiver believes that settlement with FNBC is in the Receivership Estate's best interest.

The Receiver advises the Court that FNBC was one of Madison Timber's multiple banks therefore the Receivership Estate has potentially substantial claims against FNBC arising from FNBC's banking relationship with Adams and Timber and any role that FNBC may be alleged to have had in the Madison Timber Ponzi scheme (which FNBC denies). But the Receiver believes the proposed settlement is preferable to a lawsuit under the circumstances. A lawsuit's result is never guaranteed. A lawsuit can take a long time to litigate to final judgment, and often a final judgment is appealed. Settlement now avoids the likelihood of drawn-out litigation and the risk of adverse rulings.

The Receiver also advises the Court that settlement now gives the Receivership Estate the opportunity to sell a valuable piece of property and retain all of its proceeds. In exchange for a release of the Receivership Estate's claims against it and a channeling injunction, FNBC will make a cash payment of \$4,000,000.00 to the Receiver and provide the Receiver with a 60 day

² Docket No. 59, *Alysson Mills v. Michael D. Billings, et al.*, No. 3:18-cv-679 (S.D. Miss).

“Tender Period” from the “Effective Date” of the Settlement Agreement within which the Receiver may satisfy all outstanding loans by FNBC to Oxford Springs, on which \$4,552,113 is currently owed, by making a lump sum payment of \$4,000,000.00 to FNBC, but the value of the proposed settlement to the Receivership Estate is far greater. The proposed settlement with FNBC will result in Sands conveying his 47.5% interest in Oxford Springs to the Receivership Estate; that conveyance, coupled with the anticipated conveyance of Billings’s 5% interest, will ensure the Receivership Estate owns 100% of Oxford Springs. By allowing the Receivership Estate to retain all of the proceeds of from the future sale of Oxford Springs’s property, the proposed settlement represents a value to the Receivership Estate that far exceeds \$4,552,113.

For all these reasons, the Receiver recommends settlement with FNBC on the proposed terms now, and the Court accepts her recommendation.

The public’s interest

The Settlement Agreement [**Exhibit A**] includes a channeling injunction, sometimes called a “bar order,” which would bar any person or non-regulatory entity³ from separately asserting claims against FNBC arising out of, in connection with, or relating to Adams and/or Madison Timber. Those claims instead would be “channeled” through the Receivership Estate.

The Court, mindful that victims of the Madison Timber Ponzi scheme have a substantial interest in the Receiver’s claims against FNBC and the proposed resolution of it, allowed interested parties an opportunity to be heard before the proposed settlement was approved. The Court entered an Order Setting Hearing, filed in the Court’s public record for the case styled *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-252 (S.D. Miss). The Order

³ To be clear, the U.S. Attorney’s Office, the F.B.I., the S.E.C., and the Mississippi Secretary of State, among other law enforcement bodies, are not affected by the proposed settlement. The Receiver does not purport to recommend any settlement that would interfere with their separate work.

Setting Hearing instructed the Receiver to publicize the Order Setting Hearing, the proposed Settlement Agreement, the proposed Order Approving Settlement, and instructions for submitting comments or objections on her website and in any forthcoming Receiver's Report.

Victims or other interested parties who wished to submit comments or objections were advised to do so at least five days prior to the Court's hearing, either by submitting the comments or objections to the Court or to the Receiver, who submitted them to the Court. Victims or other interested parties who wished to address the proposed settlement at the hearing were given an opportunity to be speak.

The Court is satisfied that the notice and hearing provided gave victims and interested parties a full and fair opportunity to be heard and gave the Court the benefit of their opinions as the Court assessed the proposed settlement's merits. The notice and hearing provided was efficient and desirable under the circumstances, given the particular interests at stake.⁴

ORDER

After notice and hearing, and after having considered the filings and arguments of counsel, the Court finds that the terms of the Settlement Agreement are adequate, fair, reasonable, and equitable; and that a bar order is appropriate. The Settlement Agreement should be and is hereby **APPROVED**.

Accordingly, the Court hereby **ORDERS** as follows:

1. The terms used in this Order Approving Settlement that are defined in the Settlement Agreement between the Receiver and FNBC, unless expressly otherwise defined herein, shall have the same meaning as in the Settlement Agreement.

⁴ The Court takes no position on whether notice or hearing is appropriate prior to the Court's approval of possible future settlement with other parties.

2. This Court has “broad powers and wide discretion to determine the appropriate relief in an equity receivership,” including the “inherent equitable authority to issue a variety of ‘ancillary relief’ measures in actions brought by the SEC to enforce the federal securities laws.” *S.E.C. v. Kaleta*, 530 Fed. App’x 360, 362 (5th Cir. 2013) (*Kaleta I*) (quoting *S.E.C. v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980)). These “ancillary relief” measures include “injunctions to stay proceedings by nonparties against the receivership” and “bar orders to secure settlements in receivership proceedings and to ‘preserve the property placed in receivership pursuant to SEC actions.’” *S.E.C. v. Stanford Int’l Bank, Ltd.*, No. 3:09-cv-00298-N, 2017 WL 9989250, at *2 (N.D. Tex. Aug. 23, 2017) (quoting *Kaleta I*, 530 Fed. App’x at 362). *See also Zacarias v. Stanford Int’l Bank, Ltd.*, No. 17-11073, 2019 WL 3281687, at *9 (5th Cir. July 22, 2019) (“Again, the receivership solves a collective-action problem among the Stanford entities’ defrauded creditors, all suffering losses in the same Ponzi scheme. It maximizes assets available to them and facilitates an orderly and equitable distribution of those assets. . . . It was no abuse of discretion for the district court to enter the bar orders to effectuate and preserve the coordinating function of the receivership.”); *see also id.* at *8 (“The bar order functioned to channel investors’ recovery into the receivership distribution process and ‘did not interfere with or improperly extinguish the [investors’] rights.’”) (quoting *S.E.C. v. Stanford Int’l Bank, Ltd.*, 927 F.3d 830, 851 (5th Cir. 2019)).

3. This Court has jurisdiction over the subject matter of this action, and the Receiver is a proper party to seek entry of this Order Approving Settlement.

4. The notice provided by this Court in the Order Setting Hearing and by the Receiver through her website and her Receiver’s Report was reasonably calculated, under the circumstances, to apprise all interested parties, and in particular, victims of the Madison Timber

Ponzi scheme, of the Settlement Agreement and the releases and bar order provided therein. The notice was also reasonably calculated, under the circumstances, to apprise all interested parties, and in particular, victims of the Madison Timber Ponzi scheme, of their right to object to the Settlement Agreement and the releases and bar order provided therein and to appear at the hearing on the motion. The notice was adequate, sufficient, and the best notice practicable and met all applicable requirements of law.

5. The Settlement Agreement was reached after a full investigation of the facts by the Receiver. The Settlement Agreement was negotiated, proposed, and entered into between the Receiver and FNBC in good faith and at arm's length. The parties were well-represented and competent to evaluate the strengths and weaknesses of all claims and defenses.

6. The value of the Settlement Agreement to the Receivership Estate is far greater than the \$4,000,000.00 cash payment that FNBC will make to the Receiver and the 60 day "Tender Period" from the "Effective Date" of the Settlement Agreement within which the Receiver may satisfy all outstanding loans by FNBC to Oxford Springs, on which \$4,552,113 is currently owed, by making a lump sum payment of \$4,000,000.00 to FNBC Settlement Agreement will result in the Receivership Estate's owning a 100% interest in Oxford Springs and retaining all of the proceeds from the future sale of Oxford Springs's property.

7. The bar order enjoining any person or non-regulatory entity⁵ from commencing or continuing any judicial, administrative, arbitration, or other proceeding, and/or asserting or prosecuting any causes of action against FNBC arising out of, in connection with, or relating in any way arising out of or relating to FNBC's banking relationship with Adams or Madison

⁵ To be clear, the U.S. Attorney's Office, the F.B.I., the S.E.C., and the Mississippi Secretary of State, among other law enforcement bodies, are not affected by the Settlement Agreement or Bar Order. The Court does not purport to approve any settlement that would interfere with their separate work.

Timber of any investment in the Madison Timber Ponzi scheme is necessary and appropriate ancillary relief to this settlement. *See Kaleta I*, 530 Fed. App'x at 362.

8. The parties and their counsel have at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

9. The Court finds that the Settlement Agreement is, in all respects, fair, reasonable, and adequate, and in the best interests of all parties claiming an interest in or asserting any claim against FNBC or the Receivership Estate. The Court further finds that a bar order is a necessary component to achieve the Settlement Agreement and to ensure maximum recovery to the Receivership Estate.

10. The Settlement Agreement, the terms of which are fully set forth in the document itself, is hereby fully and finally approved. The parties are directed to implement and consummate the Settlement Agreement in accordance with its terms and with this Order Approving Settlement.

11. The Court hereby permanently bars, restrains, and enjoins any person or non-regulatory entity from commencing or continuing any judicial, administrative, arbitration, or other proceeding, and/or asserting or prosecuting any claims or causes of action against FNBC arising out of, in connection with, or relating in any way arising out of or relating to FNBC's banking relationship with Adams and/or Madison Timber, or any investment in the Madison Timber Ponzi scheme. Such causes of action are instead channeled "into the receivership distribution process." *Zacarias*, 2019 WL 3281687, at *9.

12. Nothing in this Order Approving Settlement or the Settlement Agreement and no aspect of the Settlement Agreement or negotiation thereof is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability, or

wrongdoing, or of any infirmity in the claims or defenses of any party in any other proceeding by the Receiver or FNBC.

13. FNBC shall deliver or cause to be delivered the Settlement Payment in accordance with the terms of the Settlement Agreement.

14. Without in any way affecting the finality of this Order Approving Settlement, the Court retains continuing and exclusive jurisdiction over the parties for the purposes of, among other things, the administration, interpretation, consummation, and enforcement of the Settlement Agreement, including, without limitation, the releases and bar order described in the Settlement Agreement and set forth in this Order.

15. The Court expressly finds and determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for any delay in the entry of this Order Approving Settlement, which is both final and appealable, and immediate entry by the Clerk of the Court is expressly directed.

16. This Order Approving Settlement shall be filed in the Court's public record and shall be served by counsel for the Receiver, via email, first class mail or international delivery service, on any person or entity that filed an objection to approval of the Settlement Agreement.

DATED: _____

Honorable Carlton W. Reeves
United States District Judge