

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

MAR 25 2013

CLERK, U.S. DISTRICT COURT

By

Deputy

ORIGINAL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Dallas Division

SECURITIES AND EXCHANGE COMMISSION (SEC),

Plaintiff

-vs-

ABC VIATICALS, INC.,

C. KEITH LAMONDA,

and JESSE W. LAMONDA, JR.,

Defendants

Civil Action No. 3:06-CV-2136-P

and

LAMONDA MANAGEMENT FAMILY

LIMITED PARTNERSHIP,

STRUCTURED LIFE SETTLEMENTS, INC.,

BLUE WATER TRUST,

and DESTINY TRUST,

Relief Defendants,

MOTION FOR REMAND TO UNITED STATES MAGISTRATE
JUDGE FOR FURTHER DEVELOPMENT OF THE RECORD
THROUGH DISCOVERY AND OTHER PROCEEDINGS

The defendant, C. KEITH LAMONDA, pro se, respectfully represents unto this Honorable Court as follows in the MOTION

FOR REMAND TO UNITED STATES MAGISTRATE JUDGE FOR FURTHER DEVELOPMENT OF THE RECORD THROUGH DISCOVERY AND OTHER PROCEEDINGS herein:

1. The defendant initiated a Motion to Compel the Receiver to abide by the Compromise and Settlement Agreement herein as the result of the Receiver's absolute refusal to abide by the agreement and recompense the defendant for assistance given under Paragraph 15 of the agreement, as well as monies related to real estate in Florida and other aspects of the agreement.

2. The motion to compel alleged that the Receiver has never, throughout the course of the receivership estate, provided a full and complete accounting, or for that matter, any accounting whatsoever, to enable the defendant to conduct an adequate review of the Receiver's administration of the receivership estate.

3. The defendant expended a great deal of time and effort in 2012 attempting to move the case to a natural culmination, based upon professional standards. Motions for relief were duly filed with the Court, all of which were calculated to litigate the matter in accordance with the overall thrust of the Federal Rules of Civil Procedure. The Motion to Compel Receiver to Comply With Court-Ordered Compromise and Settlement Agreement was filed on May 2, 2012 [Document 344]. A Motion to Freeze Receivership Assets and Enjoin Further Receivership Expenditures Pending Resolution of C. Keith LaMonda's Motion to Compel [Document 356], a Motion for Sanctions Against Receiver Pursuant to Federal Rule of Civil Procedure 11 [Document 366], and a Motion to Intervene of C. Keith LaMonda [Document 374] were instituted with the object of maturing the motion to compel for resolution. The Receiver filed responses to all three of such motions, to which the defendant duly replied. A host of other motions were resolved by the Court, firmly establishing the justifiability of the defendant's claims and engendering a reasonable belief that the Honorable United States Magistrate Judge intended to adjudicate the defendant's claims in a neutral and detached fashion without according the Receiver the

presumption normally accorded the SEC and the Receiver, especially Michael J. Quilling, in previous receivership cases arising in the Northern District of Texas. The defendant articulates this conclusion with the utmost respect for the judicial officers who have acted in receivership cases in the past in the Northern District of Texas, and by appeal, to the United States Court of Appeals for the Fifth Circuit--the cases, viewed in their totality, speak for themselves.

4. In December, 2012, the Honorable United States Magistrate Judge abruptly placed a stay upon the filing of any and all papers and documents in the proceeding pending further order of the Court. The defendant reasonably believed at that time that the Honorable United States Magistrate Judge was simply clearing the docket to facilitate further maturation of the litigation. The defendant now knows, based upon the actions of the Honorable United States Magistrate Judge subsequent to the entry of the stay, that the Court had decided to stymie further development of the record and prevent the defendant in engaging in the discovery to which he was entitled by the Federal Rules of Civil Procedure, the Due Process Clause of the Fifth Amendment, and the right of access to the courts fully protected by the United States Constitution.

5. The defendant, during the period of the stay, was anxiously contemplating the filing of other motions in the case designed to move the motion to compel toward culmination in an ore tenus hearing. The stay was, in fact, never removed, and the defendant would have been in contempt of court by filing any motion or pleading objecting to the final disposition of the claims at that juncture.

6. To the defendant's horror, the Honorable United States Magistrate Judge, during the first week of February, 2013, without removing the aforesaid stay, scheduled a hearing to be conducted during the afternoon of February 20, 2013, and ordered the U. S. Marshal Service to insure the defendant's presence at such hearing. At all relevant times herein, the defendant has been assigned to the Federal Correctional Institution 2, P. O. Box 1500, Butner, North Carolina 27509. Thus, the order requiring the defendant's presence in Dallas, Texas only two weeks thereafter totally surprised the defendant. The necessity for the defendant's presence at the hearing required that the U. S. Marshal Service place the defendant in transit immediately. The havoc wreaked by the expedited procedure precluded the defendant from effecting service of subpoenas for witnesses and documents which would have avoided the impact of the hearsay rule under which the Honorable United States Magistrate Judge denied the bulk of the defendant's voluminous emails and documents submitted as exhibits with his motion to compel herein. The immediacy of the hearing also precluded the defendant from conducting even one hour of research in preparation for the impending hearing.

7. The defendant's personal property was removed from his possession immediately upon entry of the Court's order requiring his transit to the Northern District of Texas, which included all legal documents relating to the instant matter with the exception of skeletal pleadings which were kept in his possession but seized by U. S. Marshals during his transport to the Northern District of Texas. The defendant has been handicapped by virtue of these events insofar as his efforts to participate in the process of litigation since that time. Not only was the defendant precluded from preparing for the hearing on February 20, 2013, but he was also placed in a helpless position with respect to the preparation of objections for filing with the Court on or before March 8, 2013, as ordered by the Court. Essentially, it was necessary that the defendant appear at the ore tenus hearing on February 20, 2013, unprepared to argue within the confines of a record that was never fully and properly developed, and place himself at the mercy of family and friends in the free world with respect to the filing of objections to the findings, conclusions, and recommendations of the Honorable United States Magistrate Judge entered on February 22, 2013.

8. The bulk of time expended in the ore tenus hearing of February 20, 2013, did not consist of presentation of evidence and arguments adduced by the defendant. Rather, the hearing was utilized as a means and opportunity for the Receiver, Mr. Michael J. Quilling, to introduce documents designed to rebut the defendant's allegations set forth in relevant pleadings and exhibits. The Receiver, in an atmosphere dictated by the Honorable United States Magistrate Judge and about seven lawyers determined to destroy the defendant's claims in any way possible, by hook or crook. The Receiver was given free rein to bolster his denial of the defendant's allegations through the introduction of voluminous documents which the defendant did not understand as a result of his inability to read and comprehend the documents before the three-hour hearing. The defendant did not have counsel and had to depend upon the Honorable United States Magistrate Judge to protect his interests.

9. The defendant duly objected in Objection 3 of his objections filed with the Court pursuant to Rule 72 that the Honorable United States Magistrate Judge "did not make provision for information which had to be properly developed through legal means, and essentially leapfrogged across the necessary discovery procedures for the purpose of merely ending LaMonda's action." (Objections, p. 4, Para. 3). The defendant stressed that "as a general objection, LaMonda objects to the Findings, Conclusions, and Recommendation as premature." (Id.). He further emphasized that he instituted the motion to compel seeking contract breach damages with inadequate information to prove his damages with certainty, "under the contemplation of procuring necessary information and documentation through discovery procedures." (Id.).

10. The defendant contemplated that upon the termination of the aforesaid stay which the United States Magistrate Judge placed upon the filing of further litigation documents, he would file a motion seeking authority to engage in pre-trial discovery. The Honorable United States Magistrate Judge never

lifted the stay and scheduled a premature ore tenus hearing to resolve the motion to compel. Accounting documents would have constituted a major portion of the motion for discovery.

11. The receivership arose out of concerted action by and between the Office of the United States Attorney for the Middle District of Florida, the Securities and Exchange Commission, the Florida Department of Insurance, and the Receiver. The ulterior purpose of the receivership was to deprive the defendant of his financial ability to defend charges which consumed eight months of trial work alone. The ruse succeeded because defense counsel, who were employed on an hourly fee arrangement, terminated their relationships with the defendant in the midst of the trial proceedings. The premature disposition of the United States Magistrate Judge deprived the defendant of his right to prove the ulterior motive for the institution of the SEC's proceedings against the defendant.

The relevance of the foregoing ulterior purpose and actions to the instant proceeding was demonstrated by the Receiver's absolute contempt during the proceedings, manifested through his intransigence and refusal to negotiate with the defendant, all of which gave rise to breach of the agreement herein. These manifestations triggered the filing of the motion for sanctions, the motion for a freeze upon receivership expenditures, and the motion for intervention upon which the Honorable United States Magistrate Judge adversely ruled. These motions were meant to be ruled upon as a means of forcing the Receiver to alter his ill intent and illegal conduct and attitude and enable the fair and just litigation of the motion to compel. The simultaneous disposition of all motions on the docket frustrated the justifiability of the supporting motions and deprived the defendant of his access to the courts and due process guaranteed by the United States Constitution.

12. The defendant has consistently voiced his concern for the Receiver's practice of representing all motions filed with the court as unopposed. The representations of the defendant's lack of opposition to motions deprived the defendant of his ability to participate in legal matters that concerned him to a very great extent. The premature disposition of the action by the United States Magistrate Judge short-circuited the defendant's intent to marshal evidence of the Receiver's corrupt practices. The current proceeding constitutes an appropriate setting for proof of such conduct. The frustration of the discovery process in the current proceeding will force the defendant to institute an alternate, independent proceeding to prove the Receiver's misconduct, in conjunction with the misconduct of other parties, including, but not limited to, the Securities and Exchange Commission, the Office of the United States Attorney General, the U. S. Department of Justice generally, including the Office of the United States Attorney for the Middle District of Florida, and the Receiver. The disposition of the motion to compel at this premature juncture violates the public policy rationale of avoiding the perpetuation of litigation and the attendant inefficiencies.

13. The Receiver purportedly introduced all documentation of his contractual relationship with the defendant during the February 20, 2013, hearing. The defendant was not in a position to rebut this allegation during the hearing based upon his lack of an opportunity to discover documents effectuated by the stay placed upon the proceedings and the premature ore tenus hearing, contributing to an unjust, untimely, and premature disposition of the entire matter. The premature action of the Honorable United States Magistrate Judge constitutes a judicial abuse of discretion of the highest order, and her conclusion that the Receiver is more credible than the defendant is preposterous in view of the documented improprieties of the Receiver set forth specifically and conclusively in the motions about which the Honorable United States Magistrate Judge recommended summary dismissals, particularly the motion for sanctions predicated upon Rule 11.

14. The premature disposition of the proceeding frustrates the defendant's efforts to prove breach and resulting damages under Paragraph 15's language confining the "assistance" rendered to the Receiver in the collection of "additional assets." The United States Magistrate Judge ignored the lack of any ambiguity whatsoever in the agreement necessitating any "interpretation" or "construction" whatsoever, manipulated the term "additional assets" to exclude any and all assistance provided by the defendant. The accounting demanded of the Receiver, which was one of the primary bases for the motion to compel, would have revealed that the United States Magistrate Judge misconstrued altogether the term "additional assets." In order to properly apply this term, the Court had to be advised of the identity of all "original assets," which a proven to constitute a fluid term which has not been placed in the context of the accounting records in their entirety. The nature of the ore tenus hearing, especially the limitation placed upon time of the defendant's presentation, precluded an adequate exploration of the accounting facts and records and would have necessitated a great deal of discovery by the defendant. Hence, the premature disposition frustrated the defendant's compliance with the burden of proof.

15. The preliminary motions present reasonable, probable proof that the Receiver entered into the compromise and settlement agreement with the intent to maintain ongoing bad faith and do absolutely nothing in the way of compensating the defendant in accordance with the terms of the agreement. The Receiver even went so far as to assure the Assistant United States Attorney in the Middle District of Florida, Ms. Karen Gable, that he would not pay one penny to the defendant out of the receivership estate over which he orchestrated control through the guise of exercising good faith in the compromise and settlement agreement herein. This fraudulent, malicious intent constitutes fraud upon the court. The defendant's inability to adduced evidence to this effect was occasioned by the refusal of the Honorable United States Magistrate Judge to admit the numerous emails submitted by the defendant and the absence of any opportunity to discover other documents in the case which are admissible. The United States Magistrate Judge characterized the issue of the emails' admissibility as "moot." The

emails were generated in the normal course of business and would have, when coupled with other documents that would have been revealed in discovery, constituted probative evidence of the Receiver's flagrant breach of contract and his flagrant contempt of this Honorable Court's powers.

16. There is great tension between the burden of proof inherent in ordinary contract law, a burden of proving entitlement to damages by a preponderance of the evidence, and the burden adopted by the Honorable United States Magistrate Judge, the clear and convincing evidence standard inherent in the construction of the motion to compel as a motion for rule to show cause. The enhanced burden of proof could only have been successfully borne by the admission of documents which would have been produced through the discovery process under the Federal Rules of Civil Procedure. The Court erred in changing the standard, but even assuming that the enhanced standard is appropriate, the defendant could have borne the burden had his right to engage in discovery and enjoy access to the courts been recognized.

17. The United States Magistrate Judge in effect ruled that the terms "additional assets" and "prior knowledge of assets by the Receiver" are mutually exclusive terms, i.e. if the Receiver had "prior knowledge" of the assets, as in the case of the portfolio of policies, the assets could not be deemed "additional assets" about which the defendant's assistance is compensable under Paragraph 15. The Receiver may have "known" about additional assets, but he acted to secure such assets through the information and assistance provided by the defendant. In the case of the portfolio of policies, the Receiver and the Honorable United States Magistrate Judge could not controvert the allegation that the defendant added at least \$5 million to the sales price by virtue of his persuasion of the purchaser to attend the auction and bid, knowing essentially what he had to bid in order to purchase the policies. The defendant employed his vast expertise and salesmanship to effectuate a bid by the purchaser. The Receiver and the Honorable United States Magistrate Judge simply refused to recognize the success of the defendant's intense, laborious efforts with regard to this aspect of the receivership estate.


Access to relevant records relating to other accounts, such as J. Lucent, Ernest Johnson, DL Stoddard, Goldenberg, and all other accounts would substantiate the same success in the procurement of funds for the receivership estate. Any proof that could not be provided by the defendant and inferred from the records gleaned from the discovery process would have been adduced through the defendant's attorneys and records produced by them in response to subpoenas duces tecum and subpoenas requiring such counsel to appear through either depositions or ore tenus hearings. The probative effect of all of such sources would have rendered any minimal knowledge of the Receiver respecting these accounts moot. The defendant's efforts proximately resulted in the accumulation of funds for the receivership estate, for which the defendant is entitled to a judgment in the amount of 25 percent thereof. Otherwise, the Court must conclude that the defendant was divested of his flourishing, successful business and his efforts to assist the receivership estate. The rationale for assisting at all was

to preserve his interest and reap some benefit from the tireless years of efforts and expenditures invested in a business which was seized by him unjustly.

18. The Honorable United States District Judge must conduct a de novo examination of the record herein. However, such de novo review would be futile with respect to the record which currently exists before the Court. The defendant posits that the record could be suitably developed at the current level, and implores the Honorable United States District Judge to undertake such action. However, in the absence of such action, the only appropriate step is remand to the Honorable United States Magistrate Judge with instructions to allow the defendant to conduct appropriate discovery and other appropriate records to insure the accumulation of an adequate record for adjudication of the defendant's claims.

WHEREFORE, the defendant, C. KEITH LAMONDA, pro se, respectfully requests that this Honorable Court, as part of its de novo review of the record presented to the district judge by the United States Magistrate Judge, enter an appropriate order providing for the conduct of discovery and other appropriate proceedings to insure the development of an adequate record before this Court for the adjudication of the defendant's claims; that in the alternative, this Honorable Court remand the proceeding to the United States Magistrate Judge for the conduct of discovery and other appropriate proceeding to insure an adequate record for the adjudication of the defendant's claims; that the Court allow an issue out of chancery to be heard by a jury of the defendant's peers on the questions of contract breach and damages; that appropriate ore tenus hearings and/or depositions be ordered as part of the Court's review; and the defendant respectfully requests that this Honorable Court grant such other and further general relief that the Court might deem just, fair, and appropriate under the circumstances set forth herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Keith Lamonda', is written over a horizontal line.

C. KEITH LAMONDA

Pro Se

CERTIFICATE OF SERVICE

I, C. KEITH LAMONDA, do hereby certify that true copies of the foregoing MOTION TO REMAND TO UNITED STATES MAGISTRATE JUDGE FOR FURTHER DEVELOPMENT OF THE RECORD THROUGH DISCOVERY AND OTHER PROCEEDINGS were

duly forwarded via first-class U. S. Mail, postage pre-paid, to Michael J. Quilling, Esquire, OSLWM, 2001 Bryan Street, Suite 1800, Dallas, Texas 75201, and Harold R. Loftin, Jr., SNR Denton U. S. LLP, 2000 McKinney Avenue, Suite 1900, Dallas, Texas 75201 this 21 day of March, 2013.

CM
3/20/13



C. KEITH LAMONDA

PRO SE

MOTION FOR REMAND TO UNITED STATES MAGISTRATE

JUDGE FOR FURTHER DEVELOPMENT OF THE RECORD

THROUGH DISCOVERY AND OTHER PROCEEDINGS

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**MOTION FOR REMAND TO UNITED STATES MAGISTRATE JUDGE FOR FURTHER DEVELOPMENT OF THE
RECORD THROUGH DISCOVERY AND OTHER PROCEEDINGS**

March ²⁰~~17~~, 2013

Clerk

United States District Court

Northern District of Texas

Dallas Division

1100 Commerce Street, Room 1452

Dallas, Texas 75242

Re: Securities and Exchange Commission (SEC) v. ABC Viaticals, Inc. et als.

Docket No. 3:06-cv-02136-P

Submission of C. Keith LaMonda's MOTION FOR REMAND TO UNITED STATES MAGISTRATE
JUDGE FOR FURTHER DEVELOPMENT OF THE RECORD THROUGH DISCOVERY AND OTHER
PROCEEDINGS entered on March ____, 2013

Dear Sir/Madam:

Enclosed herewith please find an original and three copies of my MOTION FOR REMAND TO
UNITED STATES MAGISTRATE JUDGE FOR FURTHER DEVELOPMENT OF THE RECORD THROUGH
DISCOVERY AND OTHER PROCEEDINGS entered herein on March ____, 2013.

Should questions or problems arise in this matter, please do not hesitate to contact me.

I am enclosing herewith a self-addressed, stamped envelope and a copy of the first page of the objections, which I respectfully request that you mark "FILED" and return to me.

Respectfully submitted,



C. KEITH LAMONDA

Pro Se

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CP 3/20/13

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INMATE CORRESPONDENCE

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Northern District of Texas

Dallas Division

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