

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL J. QUILLING, RECEIVER
FOR SARDAUKAR HOLDINGS, IBC
AND BRADLEY C. STARK
Plaintiff,

v.

HANS TSCHBAUM, MICHAEL
TSCHBAUM, and PALACE
INVESTMENTS, INC.
Defendants

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Civil Action No. 3:05-cv-01465-L-BD

ECF

Referred to the U.S. Magistrate Judge

AGREED MOTION TO STAY DEADLINES UNTIL AUGUST 21

Defendants file this motion to stay filing deadlines until August 21, or as the court may order, to allow the parties to finalize their settlement in this case.

A. Introduction and Procedural History

1. Michael J. Quilling, as receiver for Sardaukar Holdings, IBC and Bradley C. Stark, is the plaintiff (“the Receiver”). Hans Tschebaum, Michael Tschebaum (“the Tschebaums”) and Palace Investments, Inc. are the defendants (“the Defendants”). On July 25, 2005, the plaintiff sued the defendants in this ancillary action to the receivership of Sardaukar. *See SEC v. Megafund Corp.*, No. 3:05-CV-1328-L (N.D. Tex.).

2. On June 22, 2006, the Defendants — now represented by counsel — filed a second motion to suspend deadlines, for leave to file late response to motion for summary judgment and motion for entry of final default judgment, and to stay proceedings until ten days after July 13. Doc. 69. This court discussed the motion with the attorneys for the parties on June 23, and on that day granted in part and denied in part the motion, deferring its rulings “until **July 13, 2006** at the earliest.” Doc. 71. The court further stated that “[i]f this case does not settle by

that date, defendants may renew their motion for leave to file late responses to plaintiff's motions." *Id.*

3. On Friday, July 21, having not heard from the parties, the Court issued Findings and Recommendation of the United States Magistrate Judge, granting the motion for summary judgment. Doc. 72. The Court also issued an order denying the Receiver's motion for preliminary injunction (Doc. 12) as no longer necessary to preserve the status quo. Doc. 73.

B. Status Report/Argument

4. Per the Court's instructions, the parties have pursued settlement. After preliminary discussions, by July 13, the parties approached reaching an agreement. Since July 13, the parties have settled in principle, and have been hammering out the details of the agreement. *See* Exs. A - F (correspondence).

5. The attached correspondence demonstrates the following progress toward final settlement:

- Friday, July 14, Ex. A – Tomko letter to the Receiver, following up on a July 13 discussion on settlement and making a detailed offer of settlement.
- Friday, July 14, 4:06 p.m., Ex. B – Quilling email to Tomko, making two more points toward the settlement agreement, stating that upon the Defendants' acceptance of those points there will be a deal and that the Receiver will prepare a motion to file with the court.
- Monday, July 17, Ex. C – Tomko letter to the Receiver with a counter point to the July 14 email.
- Tuesday, July 18, 4:56 p.m., Ex. D – Rodine email to Tomko following up on conversations and laying out a timeline for the settlement (providing at least 20 days for court approval)
- Tuesday, July 18, 5:36 & 6:07 p.m., Ex. E – Rodine-Tomko email correspondence clarifying a detailed point in the settlement agreement.
- Monday, July 24, Ex. F – Tomko email to the Receiver forwarding proposed language for a letter to the court on the status of the settlement and in response to the court's orders of July 21.

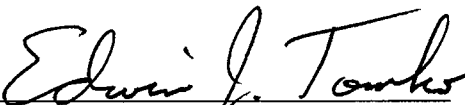
6. The settlement is somewhat complex, having some built-in contingencies dependent on the Receiver's satisfaction with financial documentation the Defendants are producing. Consequently, the amount of time necessary to complete the settlement is uncertain, but the settlement will take at least 20 days (see Ex. D). Thus, the parties ask for a stay of deadlines, including the July 31 deadline to file any objections to the July 21 Findings and Recommendation of the United States Magistrate Judge. The parties seek this stay of deadlines in order to minimize the costs to the parties and maximize the amount that can be paid to the Receiver in the final settlement. The proposed August 21 deadline is simply the parties' best guess as to when the settlement can be consummated. In the alternative, the court could set a deadline of 25 days after the Receiver files the motion to approve settlement proposal. *See* Ex. D (Rodine email setting out a proposed timeline to settlement).

7. In the alternative, or in addition, the parties request a status conference call with the court so that they may answer any questions and settle any remaining issues on the management of this case.

8. Defendants pray that this court will grant this motion and issue an order suspending all deadlines until August 21, or as the court may order.

Respectfully submitted,

CURRAN TOMKO TARSKI
A Limited Liability Partnership

By: 

Edwin J. Tomko, Esq.
State Bar No. 20117800
Susan Hays
State Bar No. 24002249
Jason M. Ross
State Bar No. 24027819

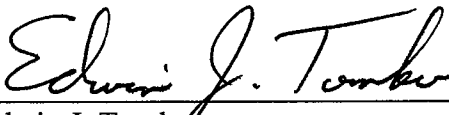
1700 Pacific Ave., Ste. 4545
Dallas, TX 75201
Telephone: 214-270-1400
Facsimile: 214-270-1401

Michael H. Artan, P.C.
One Wilshire Boulevard
Suite 2200
Los Angeles, CA 90017
Telephone: 213-688-0370
Facsimile: 214-627-9201
Pro hac vice

ATTORNEYS IN CHARGE FOR
DEFENDANTS

CERTIFICATE OF CONFERENCE

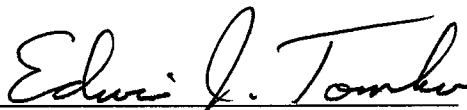
I certify that on June 24, 2006, I attempted to confer with Brent Rodine via email (*See* Ex. F). I also attempted to confer by phone. On July 26, my colleague, Susan Hays, attempted to confer by email. (*See* Ex. G) On July 26, the parties conferred on the status of this case, and are agreed to this motion.


Edwin J. Tomko

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Agreed Motion to Stay Deadlines was served via by ECF notice on all counsel of record as listed below:

Michael J. Quilling
Quilling Selander Cumiskey & Lownds, PC
2001 Bryan Street, Suite 1800
Dallas, Texas 75201-4240


Edwin J. Tomko

CURRAN TOMKO TARSKI

A LIMITED LIABILITY PARTNERSHIP
1700 Pacific Avenue, Suite 4545
Dallas, TX 75201

Edwin J. Tomko
Direct Dial: (214) 270-1405
etomko@mcttlaw.com

July 14, 2006

Telephone: (214) 270-1400
Facsimile: (214) 270-1401

Via Email and First Class Mail

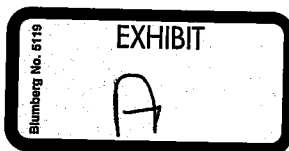
Michael J. Quilling
Quilling Selander Cummiskey & Lownds
2001 Bryan Tower, Suite 1800
Dallas, TX 75201

Re: *Michael J. Quilling, Receiver for Sardaukar Holdings, IBC and Bradley C. Stark v. Hans Tschebaum, Michael Tschebaum, and Palace Investments, Inc.*; Civil Action No. 3:05-cv-01465; In the United States District Court for the Northern District of Texas, Dallas Division

Dear Mr. Quilling:

As a follow up to our conversation of July 13, 2006, the undersigned on behalf of Hans Tschebaum, Michael Tschebaum and Palace Investments, Inc., provides the following offer of settlement:

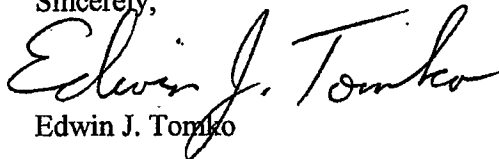
1. Consent to transferring the title of the Maserati to the Trustee and waive further claim to right, title, or interest in the Maserati, immediately upon the Trustee's acceptance of the information provided in item 4 of this offer;
2. Consent to provide proof of insurance for the Maserati through the date of transfer to the Trustee;
3. Consent to transferring \$125,000.00 to the Trustee and waive further claim to right, title or interest in the money immediately upon the Court's acceptance of the settlement, in complete settlement of any claims the Trustee may have against Hans Tschebaum, Michael Tschebaum and Palace Investments, Inc.
4. Agree to receive, review and respond truthfully in writing through counsel to written questions presented by the Trustee, with the parties to stipulate that providing such written responses will not constitute a waiver of any Fifth Amendment privilege;
5. Agree to provide sworn financial statements for Hans Tschebaum, Michael Tschebaum and Palace Investments, Inc., with the parties to stipulate that providing the sworn financials will not constitute a waiver of any Fifth Amendment Privilege.



July 14, 2006
Page 2

Please provide your response to the offer of settlement to the undersigned.

Sincerely,

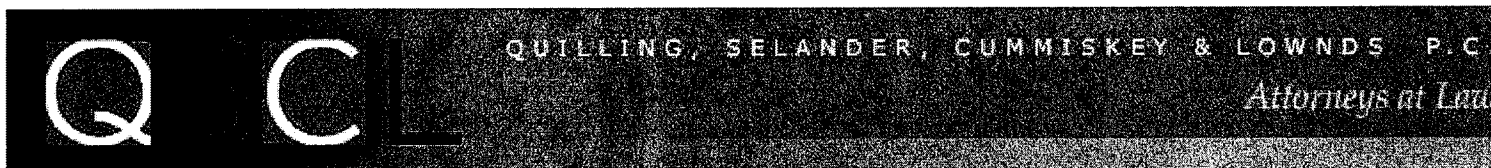
A handwritten signature in black ink that reads "Edwin J. Tomko". The signature is written in a cursive style with a large, looping initial "E".

Edwin J. Tomko

EJT:cwb

Edwin J. Tomko

From: Michael Quilling [mquilling@qsclpc.com]
Sent: Friday, July 14, 2006 4:06 PM
To: Edwin J. Tomko
Subject: Tschebaum



Dear Ed:

Thank you for your letter of July 14, 2006. This is to confirm our discussions regarding that letter.

1. Transfer of the title to the Maserati must take place upon Court approval of our settlement. I will not wait until I have accepted the information because that may not occur at all or it may take some time for it to occur and I do not want this asset to waste further.
2. My agreement to acceptance of the \$125,000.00 is conditioned upon the sworn financial statements not showing that your clients have the present ability to pay a far greater sum. You've told me that you do not believe that such a thing will be evident when I review the financials. Accordingly, I suggest that you get the financials together quickly and get them to me between now and the time of the hearing on approval of the settlement. If I have been able to receive and review the financials prior to that time, assuming what you say is true, I will be able to tell the Court that based upon those financials I am not able to collect substantially more than they have offered and that I therefore think it's in the best interest of the estate to do the settlement.

Upon your clients' acceptance of these points, we have a deal and I will prepare a motion to file with the Court. Please let me hear from you at your very earliest opportunity.



Michael J. Quilling

QUILLING · SELANDER · CUMMISKEY · LOWNDS
2001 Bryan Street, Suite 1800
Dallas, Texas 75201

214-871-2100 (main)
214-871-2111 (facsimile)

2001 Bryan St., Suite 1800, Dallas, Texas 75201 | ph. 214.871.2100 | fx. 214.871.2111

CURRAN TOMKO TARSKI

A LIMITED LIABILITY PARTNERSHIP
1700 Pacific Avenue, Suite 4545
Dallas, TX 75201

Edwin J. Tomko
Direct Dial: (214) 270-1405
etomko@mcttlaw.com

July 17, 2006

Telephone: (214) 270-1400
Facsimile: (214) 270-1401

Via Email and First Class Mail

Michael J. Quilling
Quilling Selander Cumiskey & Lownds
2001 Bryan Tower, Suite 1800
Dallas, TX 75201

Re: *Michael J. Quilling, Receiver for Sardaukar Holdings, IBC and Bradley C. Stark v. Hans Tschebaum, Michael Tschebaum, and Palace Investments, Inc.*; Civil Action No. 3:05-cv-01465; In the United States District Court for the Northern District of Texas, Dallas Division

Dear Michael:

My clients' offer of settlement is dependent upon your acceptance of the \$125,000 cash repayment. In order to facilitate such an agreement, my clients agree to provide sworn financial statements for your review prior to entering into a binding settlement agreement.

All other aspects of our July 14, 2006, letter remain in effect.

Sincerely,


Edwin J. Tomko

EJT:cwb



Edwin J. Tomko

From: Brent Rodine [brodine@qsclpc.com]
Sent: Tuesday, July 18, 2006 4:56 PM
To: Edwin J. Tomko
Cc: Michael Quilling
Subject: proposed settlement

Dear Mr. Tomko:

Based on our earlier conversations, I've prepared the following timeline showing how a proposed settlement could be structured that addresses the concerns of all involved.

SETTLEMENT PROPOSAL

The parties will enter into a settlement proposal that sets out the following:

- Defendants agree to pay the Receiver \$125,000
- Defendants agree to have the Maserati's title pass to the Receiver
- The proposal is conditioned upon the Receiver's final approval after viewing sworn financials
- Defendants will agree to truthfully and fully answer fact questions posed by the Receiver
- The parties will agree to join in an agreed judgment disposing of this litigation

MOTION TO APPROVE SETTLEMENT PROPOSAL

After both parties sign the settlement proposal, the Receiver will file a motion asking the Court to approve it in 20 days.

20 DAY PERIOD BEFORE APPROVAL

During the 20-day period before judicial approval, the following will happen:

- Defendants will provide sworn financials to the Receiver by the 14th day
- The Receiver will give final approval to the \$125,000 settlement figure by the 17th day or offer another settlement figure if the sworn financials reveal assets significantly higher than was previously represented
- Defendants will then wire \$125,000 (or the final settlement figure) to the Receiver by the 20th day

COURT APPROVAL

The Court can then enter its order approving the settlement and granting the Receiver title to the Maserati. At that point, the Defendants will only have a standing obligation to answer questions posed by the Receiver.

Ed, I think this fairly reflects the concerns that we've both stated and hope this meets with your clients' approval. Please let me know if we can transfer these terms into a workable agreement.

Sincerely,
Brent

Brent J. Rodine
QUILLING SELANDER CUMMISKEY & LOWNDS
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
E-mail: brodine@qsclpc.com
Phone: (214) 871-2100



Edwin J. Tomko

From: Brent Rodine [brodine@qsclpc.com]
Sent: Tuesday, July 18, 2006 6:07 PM
To: Edwin J. Tomko
Cc: Michael Quilling
Subject: RE: proposed settlement

Dear Mr. Tomko:

We're willing to proceed with the \$125,000 figure based on the Defendants' representations that they do not have assets to satisfy a full judgment and that \$125,000 is, in all fairness, what they can afford. In exchange, we just want to opportunity to renegotiate if the sworn financials reveal that they can pay significantly more.

Basically, we'd have the express opportunity to reject the \$125,000 figure and offer a new figure after seeing the sworn financials. If the Defendants don't agree to the new figure, then both parties would have the right to cancel the settlement proposal and object to it before Court approval. In that case, we would be right back to the position where we are now—i.e., preparing for the MSJ hearing.

Please call me if you have any additional questions.

Sincerely,
Brent

Brent J. Rodine
QUILLING SELANDER CUMMISKEY & LOWNDS
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
E-mail: brodine@qsclpc.com
Phone: (214) 871-2100

From: Edwin J. Tomko [mailto:etomko@cttlegal.com]
Sent: Tuesday, July 18, 2006 5:36 PM
To: Brent Rodine
Cc: Michael Quilling
Subject: RE: proposed settlement

Dear Mr. Rodine:

We need one clarification of the information in your attached email. On the 17th day the Receiver can accept the \$125,000 or "...offer another settlement figure...". On the 20th day the Defendants will wire \$125,000 or "...the final settlement figure...". If a different settlement figure is presented by the Receiver that is not acceptable to the Defendants, will that void the settlement? Otherwise, the Defendants are agreeing to an open ended settlement figure with no recourse.



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Edwin J. Tomko

From: Edwin J. Tomko
Sent: Monday, July 24, 2006 11:23 AM
To: Michael Quilling
Cc: 'Brent Rodine'
Subject: FW: text attached.

Gentleman:

Attached below is a joint notice I would like us to forward to Judge Kaplan to maintain the status quo while we complete the settlement process. Please provide me with your comments ASAP so that we can get something to the court today. Our failure to keep him advised resulted in the two orders being issued before we had an opportunity to respond. Hopefully a response will not be necessary, but the Defendant would like to keep that option open.

Thank you for your continuing cooperation in this process.

Ed

Edwin J. Tomko
CURRAN TOMKO TARSKI
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7/26/2006

From: Susan Hays [mailto:haystex@sbcglobal.net]
Sent: Monday, July 24, 2006 11:06 AM
To: Edwin J. Tomko
Subject: text attached.

Proposed text of letter or motion to the court:

Dear Judge Kaplan,

The parties regret not timely informing the court of the progress they have made toward resolving this matter. The parties have duly negotiated since the court's June 23 order. Last week, the parties reached an agreement in principle which the receiver is committing to written form. Specifically, on July 18, the parties agreed to a detailed schedule for resolving this matter, namely:

- After the Receiver views sworn financials, the parties' settlement will be signed by the parties.
- The Receiver will file a motion asking the court to approve the settlement in 20 days.
- No later than 14 days before judicial approval (or six days after the Receiver files the motion), the Defendants will provide sworn financials to the Receiver.
- The Receiver will give his final approval to the settlement by three days later.
- On the 20th day, the defendants will wire the settlement amount to the Receiver.
- The court may then enter its order approving the settlement and granting title of the Maserati to the Receiver.
- Then the Defendants will have a standing obligation to answer questions posed by the Receiver.
- The parties will join in an agreed judgment disposing of this litigation.

The parties request that the court hold the Findings and Recommendation of the United States Magistrate Judge, Doc. No. 72, for twenty days after the Receiver files the motion. The parties have agreed to defer the ten day deadline for filing written objections to the court's proposed findings and recommendations, which would be due on July 31. *See* 28 U.S.C. § 636(b)(1)(C). The parties believe there will be no need to file such objections or to incur any additional costs in litigating this matter given the detailed settlement schedule set out above.

Signed,
Ed Tomko
Counsel for the Defendants

Michael Quilling
Brent Rodine
Counsel for the Receiver

Susan Hays
Law Office of Susan Hays, P.C.
(214) 557-4819
hayslaw@sbcglobal.net

Susan L. Hays

From: Susan L. Hays
Sent: Wednesday, July 26, 2006 12:17 PM
To: 'Brent Rodine'; 'Michael Quilling'
Cc: Edwin J. Tomko
Subject: Please respond

Ed has been trying to reach you to discuss the status of the case. I am preparing a motion to file with Judge Kaplan today based on the text Ed emailed to you on Monday (see below). Please call ASAP to confer. You will recall that the judge requires a joint status report with motions. See Doc. 51. I need your cooperation to comply with that order.

Susan Hays
Curran Tomko Tarski, LLP
1700 Pacific Ave., Ste. 4545
Dallas, Texas 75201
214-270-1400 (phn)
214-557-4819 (cell)
214-270-1401 (fax)
shays@cttlegal.com

Board Certified in Civil Appellate Law

From: Edwin J. Tomko
Sent: Wednesday, July 26, 2006 12:15 PM
To: Susan L. Hays
Subject: FW: text attached.

Edwin J. Tomko
CURRAN TOMKO TARSKI
A Limited Liability Partnership
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Suite 4545
Dallas, Texas 75201
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7/26/2006

based on the taxpayer's particular circumstances from an independent tax advisor. No limitation has been imposed by Curran Tomko Tarski, LLP on disclosure of the tax treatment or tax structure of the transaction(s) or matter(s).

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Ed

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Sent: Monday, July 24, 2006 11:06 AM
To: Edwin J. Tomko

Subject: text attached.

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Signed,
Ed Tomko
Counsel for the Defendants

Michael Quilling
Brent Rodine
Counsel for the Receiver

Susan Hays
Law Office of Susan Hays, P.C.
(214) 557-4819
hayslaw@sbcglobal.net

7/26/2006