

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,

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v.

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

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

ECF  
Referred to the U.S. Magistrate Judge

**DEFENDANTS' 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**

Defendants file this second motion for leave to file a late response to motion for summary judgment and motion for entry of final default judgment, and to stay the proceedings until ten days after July 13, the date the Court has set as a deadline for the parties to attempt to settle 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. Because of the untimely withdrawal of counsel for two Defendants, Hans and Michael Tschebaum, and the aggressive actions of the Receiver during the time when he knew

that the Tschebaums' counsel was seeking to withdraw and had withdrawn, all Defendants now request a stay of this action until July 13 so that settlement talks can proceed without being fettered by dispositive motions launched at a time when new counsel is unable to adequately respond as counsel is in the process of obtaining facts, client files, and other information necessary to provide adequate representation.

3. The following timeline explains the procedural fix the withdrawal of counsel left the Defendants' in:

April 28	Prior counsel for the Tschebaums, Bruce W. Claycombe, tells the Receiver that a conflict has arisen in his representation, but that he would attempt to resolve the conflict or resolve this matter entirely. To that end a monetary settlement offer was made and the Maserati in question was returned. The Receiver did not respond to the monetary settlement offer. Doc. 53 at ¶ 2.
May 4	The Receiver's counsel emails Claycombe confirming that he will accept service for Palace Investments. Doc. 57, Ex. A-2.
May 12	The Receiver files a Motion for Summary Judgment against the Tschebaums, per discussion at the April 28 hearing. Doc. 44.
May 15	The court issues a scheduling order requiring Palace Investments to answer by May 25 and requiring Defendants to respond to the Motion for Summary Judgment by June 8. Doc. 47.
May 19	The Receiver files a Motion for Order to Show Cause directed in part at the Tschebaums but filed in another action to which the Tschebaums are not a party. <i>See SEC v. Megafund Corp.</i> , No. 3:05-cv-01328, Doc. 148. <sup>1</sup>
May 22	The court issues a show cause order in No. 3:05-cv-01328 setting hearing for June 2 at 10 a.m. and issues orders in this action setting a status conference and continuance of the preliminary injunction hearing for the same day. Docs. 49 & 50.
May 25	Claycombe moves to withdraw from representing the Tschebaums and contends that he has never represented Palace Investments nor did he represent the Tschebaums in No. 05-cv-01328, the action through which the Receiver filed the Motion for Order to Show Cause against the Tschebaums. The motion requests a 30 day extension of deadlines so that the Tschebaums may retain replacement counsel. Doc. 53.
May 26	The court sets the motion to withdraw for June 2, Doc. 54, and resets the show cause hearing in No. 3:05-cv-01328 for June 16. Doc. 151.
June 2	The court grants the motion to withdraw. Doc. 56

<sup>1</sup> The docket sheet in No. 3:05-cv-01328 contains a notice of service of this show cause order on Bradley and Pamela Stark, Doc. 152, but there is no such notice of service on file for the Tschebaums.

June 6	The Receiver files a request for clerk's entry of default against Palace Investments. Doc. 57.
June 8	– Claycombe files a notice of withdrawal from representation of the Tschebaums. Doc. 58 – The Tschebaums first contact the undersigned attorney regarding representing them in this matter.
June 12	The undersigned attorneys file an appearance on the part of the Tschebaums. Doc. 59
June 13	– Michael Arten files an application for admission pro hac vice for the Tschebaums. Doc. 60 – The Receiver, the undersigned counsel, counsel for Stark, and the court hold a telephone status conference during which the court directed the parties to settle this matter within 30 days (by July 13), postponed the June 16 hearing on the motion for preliminary injunction in this case and a motion to show cause in No. 3-05-CV-1328-L, until the Receiver seeks to reset that matter but no earlier than the 30-day period for settlement talks
June 14	The undersigned attorneys file an appearance on the part of Palace Investments, Doc. 61, and a motion for extension of time to file a response to the motion for summary judgment and requesting a stay of proceedings until July 13 pending settlement talks, but court un-files the motion for failure to submit a signed joint status report per Doc. 51. <i>See</i> Doc. 63.
June 16	The Receiver files an affidavit of service on Palace Investment. Doc. 66
June 19	The Clerk enters default against Palace Investments. Doc. 67.
June 20	The Receiver files a motion for entry of default judgment against Palace Investments. Doc. 68.

4. Pending before this Court are the Motion for Preliminary Injunction, Doc. No. 12, Motion for Protective Order, Doc. No. 18, Motion for Summary Judgment, Doc. No. 44, and the Motion for Entry of Final Default Judgment, No. 68.

### **B. Argument**

5. Because the Tschebaums' prior counsel moved to withdraw on the day the Palace Investment's answer was due, and this Court granted leave to withdraw on June 2, six days before the summary judgment response would have been due, the Defendants' were unrepresented and unable to meet these deadlines. The Defendants have now retained counsel,

who entered an appearance for the Tschebaums on June 12 and are entering an appearance for Palace Investments on June 14, and are pursuing settlement of all remaining issues.

6. The parties and the court held a telephone status conference on June 13, during which the court directed the parties to settle this matter within 30 days. The Receiver has responded by continuing to file dispositive motions.

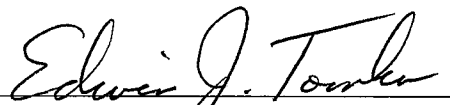
7. The Court is requested to reschedule the deadlines for: (1) Palace Investment's answer, (2) the Receiver's Amended Motion for Summary Judgment, and (3) the Defendants' response, as previously scheduled in Document No. 47, and stay the remaining proceedings, particularly the motion for summary judgment and the motion for entry of final default judgment (Docs. 44 & 68). Or in the alternative, the Court should allow Defendants leave to file late response to the motion for summary judgment and response to the motion for entry of final default judgment. All of the Defendants now have willing counsel. The Court has requested that the parties pursue settlement, giving a deadline of July 13. The interests of judicial efficiency would be better served by staying the proceedings and extending litigation deadlines past the time for settlement talks.

8. Consequently, the Defendants ask the Court to suspend any deadlines or action in this case until ten days after the July 13 settlement deadline, so that the parties may in good faith attempt to settle this matter with minimal cost.

9. Defendants pray that this Court will grant this motion and issue an order suspending the deadlines in this case until ten days after the July 13 settlement deadline and re-setting any individual deadlines as the Court sees fit. In particular, the Defendants request leave for time to respond to the motion for summary judgment against the Tschebaums and motion for entry of final default judgment against Palace Investments be granted.

**CERTIFICATE OF CONFERENCE**

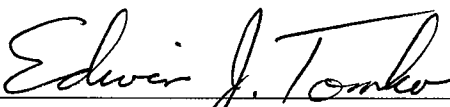
I certify that on June 14, 2006, I conferred Michael Quilling, Receiver, and he is opposed to this motion. In addition, on June 21, 2006, I again conferred with the Receiver, and he is opposed to this motion as detailed in the joint status report filed simultaneously with this motion.

  
Edwin J. Tomko

**CERTIFICATE OF SERVICE**

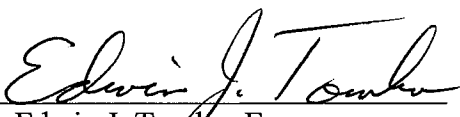
I hereby certify that a true and correct copy of the foregoing Motion for Leave was served via by ECF notice on all counsel of record as listed below:

Michael J. Quilling  
Quilling Selander Cumiskey & Lownds, PC  
2001 Bryan Street, Suite 1800  
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Edwin J. Tomko

Respectfully submitted,

CURRAN TOMKO TARSKI  
A Limited Liability Partnership

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