

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-CV-80468-MIDDLEBROOKS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JCS ENTERPRISES INC. d/b/a JCS
ENTERPRISES SERVICES INC., T.B.T.I. INC.,
JOSEPH SIGNORE, and PAUL L. SCHUMACK, II,

Defendants.

**RECEIVER'S UNOPPOSED MOTION FOR AN ORDER SEEKING COURT
APPROVAL TO ENTER INTO AN ASSIGNMENT AND ASSUMPTION AGREEMENT
TO TRANSFER CERTAIN ASSETS FROM THE SCHUMACKS TO THE
RECEIVERSHIP ESTATE WITH INCORPORATED MEMORANDUM OF LAW**

James D. Sallah, Esq., not individually, but solely in his capacity as the Receiver (“the Receiver”) for JSC Enterprises Inc. d/b/a JCS Enterprises Services Inc. (“JCS”), T.B.T.I. Inc. (“TBTI”), and My Gee Bo, Inc. (“GeeBo”), their affiliates, subsidiaries, successors and assigns (collectively, the “Receivership Entities” or “Receivership Estate”), moves for authority to enter into an Assignment and Assumption Agreement with Defendant Paul L. Schumack, II and his wife, Ms. Christine A. Schumack (collectively, “the Schumacks”), in which the Schumacks are voluntarily agreeing to transfer certain assets to the Receivership Estate with the Court’s approval. A redacted, proposed “Assignment and Assumption Agreement” (“Agreement”) is attached as **Exhibit “A.”**¹ In support, the Receiver provides as follows:

¹ The undersigned has redacted account numbers as required by the Local Rule.

RELEVANT BACKGROUND

1. The Receiver is pleased to report to this Court that the Schumacks, without admitting any liability or culpability, have voluntarily agreed to transfer certain assets to the Receivership Estate for the benefit of creditors.

2. As a result, in accordance with the Amended Receivership Order [DE 19] and the Order Granting Receiver's Emergency Motion to Expand Receivership to Include GeeBo [DE 26], the Receiver has negotiated and prepared the attached Assignment and Assumption Agreement for the Court's review and approval, which has already been signed by the parties.

3. While the Agreement transfers certain assets to the Estate, Section 4 provides that the Receiver may accept *or reject* the assignment of any of the listed assets for a period of thirty (30) business days after the Agreement's closing date. During this thirty (30) day period, the Receiver has the opportunity to conduct due diligence into each of the assets to ensure that he believes that accepting them is in the Receivership Estate's best interest.

4. The assets are set forth on Schedule 1 to the Agreement and include, among other things, the Schumacks' personal residence, which was purchased in 2013 for approximately \$1,649,000.² The Schumacks have already signed a quit claim deed, a true and correct copy of

² Notably, the Agreement provides that the Government has filed a Notice of Lis Pendens Re: Forfeiture in *United States of America v. Paul Lewis Schumack II*, Case No. 14-80081-CR-HURLEY/HOPKINS (S.D. Fla. April 7, 2014) in Broward County, Florida. However, the undersigned has conferred with Assistant United States Attorney Ellen Cohen, who has provided that if the Receiver accepts and obtains title to the property, the Government will file a release of the *lis pendens*.

which is attached as **Exhibit “B,”** transferring title of the property to the Receiver subject to the Court’s approval of the Agreement and the Receiver’s acceptance of the asset.³

5. To the extent assignable, the Agreement also transfers certain rights and interests in an annuity; life insurance policies; payments to and/or from the Department of Treasury, Internal Revenue Service; units, shares, and investment interests in PSCS Holdings, LLC; and units, shares, and investment interests in Fuel Foods, Inc.

6. Depending on whether the Receiver accepts the assets and their future market value, this Agreement has the potential to increase the Estate’s value significantly. It may also provide additional value by obviating the necessity for the Receiver to expend considerable Estate funds and resources pursuing these specific assets through legal proceedings. As a result, the Agreement will likely increase the Receivership Estate’s value and preserve its funds.

7. Significantly, Section 8 of the Agreement provides that it is neither a release nor a waiver of any claims or causes of action that the Receiver has, or will have, against either Defendant Paul L. Schumack, II, or his wife, Christine A. Schumack, and/or their affiliates. Further, this section of the Agreement is clear that the Receiver may pursue additional assets not included in the Agreement from the Schumacks in the future if the Receiver elects to do so.

8. To the effectuate the Agreement, which would close no later than one (1) calendar day of this Court’s approval of this Motion, the Receiver requests that the Court modify Section II, “Asset Freeze,” of its Order of Preliminary Injunction and Other Relief Against Defendants Joseph Signore and Paul L. Schumack [DE 47] (“Asset Freeze Oder”) for the sole and limited purpose of permitting Defendant Paul L. Schumack, II to transfer the assets included in the

³ As part of his due diligence, the Receiver has already initiated a title search on the property. If this Court approves the Agreement and the Receiver subsequently accepts the property after his due diligence, he will record the deed to transfer the property.

Agreement to the Receiver subject to the terms of the Agreement, including the Receiver's acceptance of any such assets. In the event the Receiver rejects any assets under the Agreement or any assets are not included in the Agreement, he requests that the Court order such assets to remain subject to the terms and conditions of the Asset Freeze Order.

9. As the parties affected by this Agreement do not oppose it, the Receiver respectfully requests that the Court grant the instant Motion immediately.

MEMORANDUM OF LAW

The Court's power to supervise an equity receivership and determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Id.* at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)).

Without question, the Court is empowered to grant the requested relief immediately. As stated above, the Receiver believes that the Agreement will likely increase the Estate's value and save the Estate resources in the future. Further, the Receiver is neither waiving any rights to seek claims against the Schumacks nor to pursue additional assets that are not included in the Agreement. The Receiver also deems this Agreement to be an appropriate action for the administration of the Estate and its creditors. As a result, the Court should employ its equitable powers and grant the instant relief.

WHEREFORE, based on the above, the Receiver seeks an order approving the attached "Assignment and Assumption Agreement" and the relief sought herein. A proposed order is attached as **Exhibit "C"** for the Court's consideration.

LOCAL RULE 7.1.A.3 CERTIFICATION

Pursuant to Local Rule 7.1.A.3, the undersigned counsel hereby certifies that he conferred with the following individuals as follows:

- 1) SEC counsel, Russell Koonin, Esq., who does not oppose this Motion;
- 2) Counsel for Defendant Paul L Schumack, II, Anthony Natale, Esq., who does not oppose this Motion;
- 3) Ms. Christine Schumack, *Pro Se* non-party, who does not oppose this Motion.
- 4) Assistant United States Attorney Stephen Carlton, who does not oppose this Motion; and
- 5) Since the Motion does not affect the interests of Joseph Signore, his counsel, Carl F. Schoepl, Esq., has no objection.

Dated: September 17, 2014

Respectfully submitted,

Sallah Astarita & Cox, LLC
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By: s/Jeffrey L. Cox
Jeffrey L. Cox, Esq.
Florida Bar No. 173479

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties and non-parties who may have an interest in the Motion identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties or non-parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Jeffrey L. Cox
Jeffrey L. Cox, Esq.

Securities and Exchange Commission
v.
JCS Enterprises, Inc. et al.
Case No. 14-80468-CIV-MIDDLEBROOKS

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