

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-80468-CV-MIDDLEBROOKS/BRANNON

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 LEAVE FROM ORDER [DE 188] AND TO
NOTIFY THE COURT OF BUYER'S DEFAULT UNDER THE ASSET PURCHASE
AGREEMENT WITH SUPPORTING MEMORANDUM OF LAW**

James D. Sallah, Esq., not individually, but solely in his capacity as the Receiver for JSC Enterprises Inc. d/b/a JCS Enterprises Services Inc., T.B.T.I. Inc., My Gee Bo, Inc., JOLA Enterprises Inc., and PSCS Holdings, LLC their principals, affiliates, subsidiaries, successors and assigns (collectively, the "Receivership Estate," "Estate," or "Receivership Entities"), respectfully files this unopposed motion for leave from this Court's January 6, 2015 Order [DE 188] to hold and publicize an auction and notifies this Court of the buyer's default under the asset purchase agreement, and in support, states as follows:

BACKGROUND

1. On November 24, 2014, the Receiver filed his Verified Motion for the Entry of an Order Authorizing and Approving the (1) Asset Purchase Agreement, Including the Overbid and Auction Procedures Consisting of a Break-Up fee and Expense Reimbursement; (2) Form and Manner of Notice of Sale, Bidding Procedures, and Auction; and (3) Sale of the Receivership

Estate's Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests with Supporting Memorandum of Law (the "Sales Procedures Motion")[DE 151].

2. On December 8, 2014, Defendant Joseph Signore filed a Memorandum of Law in Opposition to Receiver's Verified Motion to Auction Receivership Assets and to Obtain Other Relief [DE151]. [DE 157]. Similarly, on December 11, 2014, Ms. Laura Grande-Signore filed a Joinder of Defendant Joseph Signore's Memorandum of Law in Opposition to Receiver's Verified Motion to Auction Receivership Assets and to Obtain Other Relief.

3. On December 15, 2014, the Receiver filed a Reply to Defendant Joseph Signore's Response. [DE 176].

4. On December 18, 2014, the Receiver filed a Reply to Non-Party Laura Grande-Signore's filing with the Court. [DE 182].

5. On January 6, 2015, the Court issued an Order granting the Receiver's Verified Motion for the Entry of an Order Authorizing and Approving the (1) Asset Purchase Agreement, Including the Overbid and Auction Procedures Consisting of a Break-Up fee and Expense Reimbursement; (2) Form and Manner of Notice of Sale, Bidding Procedures, and Auction; and (3) Sale of the Receivership Estate's Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests with Supporting Memorandum of Law (the "Sales Procedures Motion")[D.E. 151]. [DE 188] (the "Order").

6. The Order provides that a public auction is to be held on February 20, 2015. The Receiver seeks leave from this Order to cancel the public auction and any publication of it.

REQUEST TO CANCEL AUCTION AND NOTICE

7. As set forth in Section 2.5 of the Asset Purchase Agreement ("APA"), Atomic Paintball, Inc. ("API") is obligated to deposit the sum of Seventy-Five Thousand Dollars

(\$75,000.00) with the Receiver upon the Court's entry of the "Sales Procedure Order," which order was entered by the Court on January 6, 2015. See DE 188.

8. API has failed to deposit the Seventy-Five Thousand Dollars (\$75,000).

9. To date, the Receiver has provided ample opportunity for API to make this payment and cure its breach. The Receiver attempted to maintain the APA because in his best business judgment, a stalking horse bid, as opposed to other considerations, is in the best Estate's best interests to maximize the assets' value.

10. At this juncture, however, the Receiver considers API in material default of its obligations under the APA and will retain the Twenty Five Thousand Dollars (\$25,000.00) received to date as per Section 2.5 of the APA.

11. On February 18, 2015, the Receiver sent API a default letter.

12. Further, until such time as API had satisfied its financial obligations under the APA, the Receiver did not find it prudent to publicize the auction in national and local periodicals or to incur any Estate expenses to market it aggressively. There is no reason to do so at this time.

13. In the Estate's best interests, the Receiver will continue to attempt to further market the assets at issue and seek court-approval for any future transaction concerning such assets.

SUPPORTING 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)). In light of

the circumstances concerning the instant default, the Receiver avers that the Court should employ is equitable power to grant this Motion.

WHEREFORE, the Receiver respectfully requests that this Court enter an unopposed order substantially similar to the proposed order, which is attached as “Exhibit 1,” granting him leave from its January 6, 2015 Order by canceling the February 20, 2015 auction and any publication of it.

LOCAL RULE 7.1(a)(3) CERTIFICATE

The undersigned counsel has conferred with counsel for Plaintiff Securities and Exchange Commission, Intervenor United States Attorney Wilfredo A. Ferrer, Defendant Paul L. Schumack, II, and Defendant Joseph Signore, none of whom oppose with the requested relief.

Dated: February 18, 2015

Respectfully submitted,

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/s/Jeffrey L. Cox
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 18, 2015, I electronically filed the above document using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and *pro se* parties 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 parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Jeffrey L. Cox

Securities and Exchange Commission

v.

JCS Enterprises, Inc. et al.

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SERVICE LIST

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* Matthew Sarelson, Esq. notified the Court that is the lead attorney for the individuals listed below and that neither Conrad & Scherer nor Nicole Sequi, Esq., remain counsel of record. As Conrad & Scherer has not been granted permission to withdraw from this Court, the undersigned continues serve the attorney above as per the record.

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