UNITED STATES DISTRICT COURT
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 MOTION TO POOL RECEIVERSHIP ENTITIES' ASSETS INTO ONE ESTATE FOR A FUTURE, APPROVED CLAIMS AND DISTRIBUTION PROCESS WITH SUPPORTING MEMORANDUM OF LAW

James D. Sallah, Esq., not individually, but solely in his capacity as the Court-Appointed Receiver (the "Receiver") for JCS Enterprises Inc., d/b/a JCS Enterprises Services Inc. ("JCS"), T.B.T.I. Inc. ("TBTI"), My Gee Bo, Inc. ("Gee Bo"), JOLA Enterprise Inc. ("JOLA"), and PSCS Holdings, LLC ("PSCS") (collectively the "Receivership Estate" or "Receivership Entities"), through the undersigned counsel, moves for an Order to pool the Receiver Entities' assets, and any future assets, into one estate for a future approved claims and distribution process. In support of this Motion, the Receiver states as follows:

I. BACKGROUND

A. Factual Summary

1. JCS and TBTI

JCS is a Delaware corporation that was incorporated in 2010 and was operated out of Jupiter, Florida. Joseph Signore ("Signore") was the Chairman and President of JCS, and Laura Signore was its Vice Chairperson and Vice President. JCS manufactured and marketed virtual concierge machines ("VCMs"), which are free-standing or wall-mounted, ATM-like machines that were promised to be placed at various locations to enable businesses to advertise their products and services via a touch screen and printable tickets or coupons. *See Sallah v. Signore*, Case No

15-CV-80946-MIDDLEBROOKS (S.D. Fla. November 18, 2016) ("*Signore* Case") (Findings of Fact at DE 125 at p.6). The Court may take notice of these findings of fact.

In 2011, JCS entered into an agreement with a company named TBTI in which would become a sales agent for JCS and its VCM program. TBTI is a Florida corporation that was incorporated in 2001 and had its former principal place of business in Coconut Creek, Florida. Paul Schumack ("Schumack") was TBTI's Vice President and Christine Schumack was its President. (Signore Case, DE 125 at p.4.).

From at least as early as 2011 through April 7, 2014, Signore and Schumack, operating through JCS and TBTI, respectively, offered and sold investments in JCS's VCMs, which would purportedly pay income to investors from advertising revenues. In total, JCS and TBTI raised approximately $80.8 million from at least 1,800 investors nationwide by selling contracts for more than 22,500 VCMs. These sales to investors were documented through contracts with JCS and TBTI, and those contracts represented that advertising revenue would provide investors with a return of $300 per month for thirty-six (36) to forty-eight (48) months, or a return of at least $10,800 over a 36 month period. However, advertising revenues were insufficient to pay the promised returns to investors. During the relevant time period from 2011 through April 7, 2014, JCS and TBTI, combined, earned a total of approximately $21,000 in advertising revenue from these machines. (*Signore* Case p.6-7.).

Besides approximately $21,000 in advertising revenue, JCS and TBTI generated no other meaningful source of revenue or cash inflows from which to pay investors or any other creditors. In order to maintain the fiction that the investment was valid and make these payments to investors, Signore and Schumack caused JCS and TBTI, respectively, to use new investor funds to make so-called "returns" to earlier investors in the total amount of $49.7 million. (*Id*.).

Specifically, while Signore operated JCS and Schumack operated TBTI, they caused JCS and TBTI to transfer monies, among other things: (1) as returns and/or redemptions to earlier investors; (2) for commissions paid to agents who perpetuated their scheme; (3) to Gee Bo, JOLA, and PSCS; and (4) for their own use. These transfers were made almost exclusively from investor funds. As a result, Signore and Schumack operated JCS and TBTI, respectively, as part of a single, continuous Ponzi scheme. (*Id*. at p.8).

2. Gee Bo

Beginning in 2013, Signore began using monies from JCS, TBTI, and investors in the Ponzi scheme to set up, capitalize, and operate Gee Bo, which is a Florida corporation that was operated out of JCS's premises. Signore was Gee Bo's President and his former wife Laura Signore, was its Treasurer and Secretary. The company, which was used as part of the investment scheme, was incorporated in 2013.

Gee Bo was marketed as a computer application that purportedly would act as a secure online vault that maintains a customer's credit card account information so that the customer could make a purchase without using a physical credit card or entering credit card information. The company claimed that when using the Gee Bo application from a smart phone, a customer could make a purchase without providing a credit card or credit card information with any merchant that had installed the corresponding software. Gee Bo's marketing also claimed that the idea behind Gee Bo was to provide instant sales without the need for providing or entering physical credit card information, thereby reducing the risk of credit card fraud. To date, the Receiver has been unable to obtain a working model of the Gee Bo application.

As explained below, Gee Bo, through Signore and others, also offered the public the "opportunity" to purchase licensing rights, among other things, to use Gee Bo software and intellectual property in certain territories, or states, within the United States. JCS first licensed its rights to Gee Bo, which, in turn, then licensed them to buyers, who were all JCS investors.

3. JOLA and PSCS

JOLA was a Florida corporation, incorporated in 2013, with its former principal place of business in Jupiter, Florida. Signore was Gee Bo's President and his former wife, Laura Signore, was its Treasurer and Secretary. JOLA was a corporate conduit for Signore to use investor funds to enrich himself. (*Signore* Case, DE 125 at p.4).

PSCS was a limited liability company organized under the laws of the State of Florida in 2013 with its former principal place of business in Highland Beach, Florida. (*Id.*). Schumack and Christine Schumack were PSCS's member-managers. (*Id.*). Like JOLA, PSCS was a corporate shell for Schumack to transfer investor funds for his own benefit.

B. Procedural Background

On April 7, 2014, the United States Securities and Exchange Commission (the "SEC") commenced an action against JCS, TBTI, Joseph Signore, and Paul L. Schumack, in the instant

case. On that same day, this Court granted a Temporary Restraining Order against JCS, TBTI, Signore and Schumack. (DE 16). Also, on April 7, 2014 this Court entered an Amended Receiver Order, (DE 19), appointing James D. Sallah, Esq. as the Receiver. (DE 19). On April 14, 2014, this Court expanded the Receivership over Gee Bo. (DE 26). On December 12, 2014, this Court further expanded the Receivership over JOLA and PSCS. (DE 168).

In a December 12, 2014 Order Reappointing James D. Sallah, Esq. as Receiver, the Court directed the Receiver to, among other things:

> Take immediate possession of all property, assets, and estates of every kind of JCS and T.B.T.I. …. wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court.

Accordingly, the Receiver now seeks to pool the Receivership Entities' assets into one estate for purposes of a future, approved claims and distribution process.

II. IDENTIFICATION AND MARSHALLING OF THE RECEIVERSHIP ESTATE

The Receiver continues to comply with his duties under the Receivership Order by diligently working to marshal, safeguard, and preserve assets of the Receivership Estate wheresoever located, while working to liquidate such assets at the highest possible price. Over time, he anticipates continuing to increase the amount of recovery for the Estate.

A. Status Reports: Complete History and Status of the Receivership

Since his appointment, the Receiver, pursuant to his duties as prescribed by the Receivership Order, has filed five (5) status reports, in which he has detailed his professionals' efforts and accomplishments in this Receivership to date. The Receiver's First, Second, Third, Fourth and Fifth Reports (collectively, the "Reports") contain a full description of the history of the receivership and all of the material events in connection with identifying and marshaling assets of the Receivership Entities and otherwise fulfilling his duties as the Receiver. (DE 107-1, 200-1, 235-1, 326-1, and 370-1, respectively). Each report is listed on the Receivership website at www.jcs-tbtireceivership.com for public review.

B. Receivership Entities' Funds and Other Assets

The Receivership Estate currently has cash totaling **$9,034,235.58** that he is holding in the Receivership Estate's segregated accounts at Signature Bank. As of February 28, 2017, the account values are as follows:

Account Name	Current Balance
MY GEE BO, INC.	**$995,066.12**
JOLA ENTERPRISES, INC.	**$582,651.29**
JCS ENTERPRISES, INC.	**$2,732,696.48**
TBTI, INC.	**$4,713,803.86**
PSCS Holdings, LLC	**$10,017.83**

The Receiver is holding other assets, including real property and settled litigation claims that have yet to be either liquidated or transferred to the segregated accounts.[1] He also anticipates future assets becoming a part of the Estate. In lieu of waiting for liquidation of such assets, he has elected to proceed with the instant request to pool all funds and assets into one estate so that he can seek a partial distribution to approved investors and creditors.[2]

III. ARGUMENT

The Court should determine whether the assets, and any future recovered assets, of the five receivership entities – JCS, TBTI, Gee Bo, JOLA, and PSCS – should be pooled, or consolidated together, into one estate for distribution to court-approved claimants.[3] Since the Receivership's inception, the assets of each entity have been preserved separately in accordance with this Court's orders. At this time, the Receiver strongly recommends that the Court authorize him to pool the

[1] Notably, the chart above is gross of incurred professional fees and costs and administrative expenses. In light of the significant remaining work to be done to recover additional assets of the Estate and to prosecute claims against third parties, the Receiver expects that he and his professionals will incur additional fees and costs in connection with fulfilling his duties under the Receivership Order.

[2] Shortly after filing this motion, the Receiver will be filing a motion to approve the claim form, manner of notice of proof of claim form, the proposed notice of proof of claim, and to establish a claims bar date.

[3] Some of the cases cited by the Receiver in support of "pooling" refer to this distribution process as "consolidation." The Receiver does not intend for "pooling" in the instant motion to mean anything other than "consolidation," as used in these cases.

Receivership Entities' assets, and all future assets, into one estate for the purposes of a future, court-approved claims and distribution process.

The task of formulating a proper distribution is a sensitive undertaking because a plan that is "equitable" might not necessarily be popular with all investors. Federal law is clear that receiverships are governed by equitable principles. *SEC v. Elliot*, 953 F.2d 1560, 1572 (11th Cir. 1992); *SEC v. First Sec. Co.*, 528 F.2d 499, 454 (7th Cir. 1976). Because receiverships are governed by equitable principles, courts may authorize a receiver, upon good cause shown, to treat various receivership entities as one substantively pooled estate for the purpose of distribution to allowed claimants. *See SEC v. One Equity Corp.*, 2011 WL 1002702, *1 (S.D. Ohio March 16, 2011) (permitting pooling of multiple receivership entities upon good cause shown for purposes of distributing assets to approved claimants).

In determining whether "good cause" exists to warrant pooling various receivership entities for distribution purposes, federal courts have examined a number of different factors, including whether: (1) a unified scheme to defraud existed among the receivership entities; (2) the investors across the various receivership entities are similarly situated; and (3) funds were commingled among the receivership entities. *See SEC v. Founding Partners Capital Mgmt.*, 2014 WL 2993780, at *6 (M.D. Fla. July 3, 2014). *SEC v. Amerifirst Funding, Inc*, 2008 WL 919546, *4 (N.D. Tx Mar. 13, 2008) (pooling receivership entities because they were all involved in a unified scheme to defraud investors, even where there was no commingling of funds); *Elliot*, 953 F. 2d at 1565, n.1 (treating various receivership entities as a single entity in light of commingling of funds among them and defendant's failure to maintain strict separation). Applying these factors here, there is no question that the Court should authorize the Receiver to pool the Receivership Entities' assets.

A. There is a Unified Scheme to Defraud a Similarly Situated Investor Base

Based on the Receiver's investigation, investors and others fell victim to the misrepresentations and omissions of Signore, Schumack, and others that were acting under their control. Moreover, the Receivership Entities' investment and/or "business" offerings were all part of the same fraudulent scheme, i.e., there was a unified scheme to defraud investors.

Schumack, through TBTI and its network of sales agents, raised tens of millions of dollars for JCS by selling JCS's VCM investment contracts by fraudulent representing, among other things, guaranteed placements for machines that were purportedly generating double digit

advertising returns. Moreover, Schumack diverted funds to himself and to PSCS, a shell entity that he and his wife controlled. (DE 114-1, ¶¶ 21-27).

In conjunction and concert with TBTI and Schumack, Signore operated JCS and Gee Bo as a fraudulent scheme. Signore took in millions of dollars through JCS both through JCS's and TBTI's sales efforts. He also caused JCS to make millions of dollars in payments to investors to continue the fiction that JCS's VCMs were actually generating revenue. In addition to making payments back to investors, Signore diverted investor funds to himself, his wife, JCS to Gee Bo, and JOLA (DE 114-1, ¶¶ 15-17); (*See also*, *Signore* Case, DE 125 pp.8-9; 17, 20.).

As detailed in the Receiver's Declaration in Support of his Motion to Expand the Receivership to Include My Gee Bo (DE 23), Gee Bo was established on April 2, 2013 by Signore and his wife, and was operated out of JCS's office suites by utilizing JCS's employees. (DE 23 at ¶¶ 7, 8, 11-13). Indeed, Signore's business card, which listed him as JCS's "CEO, Founder" also contains a Gee Bo logo and states "JCS Enterprises Specializing in Virtual Concierges & GeeBo Network." (*Id*. at ¶8). Similarly, Laura Signore's business card, which listed her as JCS's "Executive Vice President," also contains a Gee Bo logo and states "JCS Enterprises Specializing in Virtual Concierges & GeeBo Network." (*Id*.).

In addition to JCS and Gee Bo investors being similarly situated in reference to their location and common control, when the Receiver took possession of JCS property, including JCS books, records, electronic data, and investor information located with the office suites, the Receiver determined that JCS's purported business was inextricably linked to Gee Bo's alleged business. The Receiver determined that JCS was paying Gee Bo's rent and other expenses. (DE 23 at ¶9, 22-24); (*see also*, DE 200-1, Ex. A (Expert Report) at ¶28, 36, 43, and 47). Indeed, JCS engaged a well-known TV personality to market Gee Bo's purported services. (*Id*. at ¶21).

Within JCS's office space, the Receiver also found JCS marketing and promotional materials that included the Gee Bo logo. These materials reflected, among other things, a picture of JCS VCMs displaying "GeeBo," a description of JCS, domain names, and "New Introductory Specials." (*Id*. at ¶16). Moreover, the Receiver spoke to several JCS investors who informed him that Gee Bo was used as part of the solicitation to get them to invest in JCS's VCMs. (*Id*. at ¶26).

Separate from the JCS's VCM securities offering, Gee Bo offered the public the "opportunity" to become a so-called "non-exclusive licensee" to use software and intellectual property in certain geographical territories within the United States. However, prior to offering

the software and intellectual property to the public, Gee Bo had actually entered into a license agreement with JCS and *obtained JCS's rights* to these products, including, but not limited to, certain logos, software and proprietary applications, and certain trademark rights. Gee Bo then essentially sub-licensed its rights to the public. Put differently, JCS first licensed its assets to Gee Bo, which, in turn, then licensed them to buyers. This is significant because JCS's investor funds and employees (or contractors) were not only used to create the products, but JCS then licensed such products to Gee Bo, which then sold licensed them to the public. (*See, e.g.*, DE 115-1 at pp. 1, 24) (a copy of a master state license agreement reflecting that Gee Bo obtained rights from JCS); (DE 122-2 at ¶8) (Receiver affirming that such agreement was within the office of JCS and Gee Bo).

Under the "similarly situated" factor, courts determine whether defrauded investors were "similarly situated with respect to their relationship to the defrauders." *SEC v. Loewenson*, 290 F.3d 80, 888-89 (2d Cir. 2002). When defrauded investors are similarly situated, "it would not be equitable to give some of them preferential treatment in equity." *Elliott*, 953 F.2d at 1569-70. Investors' circumstances need not be identical; a "reasonably close resemblance of facts and circumstances is sufficient. *SEC v. Byers*, 637 F. Supp. 2d 166, 179-80 (S.D.N.Y. 2009). To establish that investors are "similarly situated" or "occupy the same legal position," courts look to the specific facts. *See Byers*, 637 F. Supp. 2d at 180 (finding real estate investors were "similarly situated" given defendants' common role to all investments, the similarity of offering materials given to investors, the commingling of money between operations, and fact that defendants' capital back the security offerings).

Here, from approximately October 2013 to March 2014, Gee Bo sold a total approximately 7 territory licenses to buyers. Each of the Gee Bo license purchasers was also an investor in the JCS-TBTI Ponzi scheme.[4] JCS investors and Gee Bo purchasers were undoubtedly part of a similarly situated investor base. Further, as explained below, Gee Bo also repurchased some territory licenses from certain buyers in about March 2014. Instead of returning the funds, Gee Bo permitted certain buyers to use the "returned" funds to invest in JCS's VCM investment

[4] As further proof that investors were similarly situated (and of commingling), it is important to note that TBTI actually purchased a license from Gee Bo for the State of Florida. While JCS sought to cancel the agreement, TBTI sent $90,000 to Gee Bo for the purchase.

opportunity. Finally, some of the Gee Bo purchasers also offered and sold JCS's VCM investments to the public in exchange for commissions in violation of both federal and state law.

Given the foregoing, there is no doubt that JCS, TBTI, Gee Bo, JOLA, and PSCS were part of a unified scheme to defraud similarly-situated investors.

B. Funds Were Commingled Among the Receivership Entities

Under the commingling factor, courts look at whether a defendant commingled investor funds. *Loewenson*, 290 F.3d at 88-89 (2d Cir. 2002). "[A]ny commingling is enough to warrant treating all the funds as tainted." *SEC v. Sunset Mgmt., Inc.*, 2009 WL 3245879 at *9 (D. Ore. Oct. 2, 2009); *see also, e.g., United States. v. Real Property Located at 12228 & 13324 State Highway 75 North*, 89 F.3d 551, 553-54 (9th Cir. 1996) (finding that pooling is justified when funds passed through many transactions for real estate purchase as were commingled with other funds at each transaction. Courts also justify treating multiple entities as one in receiverships were defendants "commingled funds between various companies and had failed to maintain a strict separation of the companies[.]" *Elliott* at 1565 n.1 (11th Cir. 1992).

As explained above, TBTI was the primary sales arm for JCS's VCMs, and the transfers back and forth between the two entities were extensive. Specifically, TBTI, through the purported sale contracts for JCS VCMs, transferred approximately $38 million to JCS from December 2011 to April 2017. To continue the fiction that the VCMs were generating revenue, JCS transferred approximately $42 million back to TBTI during the same time period, which TBTI utilized to repay investors approximately $39 million. (*See Signore* Case, DE 93-4, Expert Report of Melissa Davis Exhibit G.).

From August 28, 2013 to April 30, 2014, there were transfers from JCS to Gee Bo totaling approximately $723,100. (*Signore* Case, DE 93-4 at Exhibit F). Moreover, TBTI transferred approximately $90,000 to Gee Bo, and Gee Bo transferred $22,000 to TBTI. *Id*. In addition, in March 2014, Gee Bo began "buying back" certain territory licenses from its purchasers.

From April 10, 2013 to April 7, 2014, JCS transferred a total $717,400 to JOLA while TBTI transferred $239,575 to JOLA. (DE 114-1, ¶¶ 14). As explained above, JOLA was simply a conduit for payments to Joseph Signore and his wife, Laura Signore.

Finally, PSCS, which was controlled by Paul Schumack and his wife, was funded through monies traceable to TBTI. In total, TBTI transferred, directly or indirectly, $2.4 million to PSCS from September 2013 to October 2014.

It is clear from the foregoing, that the cash flow between and amongst the Receivership entities evidences commingling.

IV. CONCLUSION

Considering each of the factors above, the Receiver avers that good cause exists to warrant pooling the assets, and future assets, of the Receivership Entities.

WHEREFORE, James D. Sallah, Esq., the Receiver, respectfully requests that this Court enter an Order substantially similar to the proposed order directing the Receiver to pool, or consolidate all of the assets, and any future assets, of the five receivership entities – JCS, TBTI, Gee Bo, JOLA, and PSCS –into one estate for a distribution to court-approved claimants.

LOCAL RULE 7.1(a)(3) CERTIFICATE

The undersigned has conferred with:

1) Anthony Natale, Esq., counsel for Paul L. Schumack, II, who without admitting or denying any of the allegations in the Motion, does not oppose the requested relief;

2) Russell Koonin, Esq., counsel for the U.S. Securities and Exchange Commission, which does not oppose this motion;

3) Assistant United States Attorney Ellen Cohen, counsel for the United States of America, which does not oppose this motion.

The undersigned counsel has been unable to confer with Defendant Joseph Signore, who is incarcerated.

Dated: March 31, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 31, 2017, 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

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