

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
BURTON DOUGLAS MORRISS,)
ACARTHA GROUP, LLC,)
MIC VII, LLC,)
ACARTHA TECHNOLOGY PARTNERS, LP, and)
GRYPHON INVESTMENTS III, LLC,)
)
Defendants, and)
)
MORRISS HOLDINGS, LLC,)
)
Relief Defendant.)
_____)

Case No. 4:12-CV-00080-CEJ

FIRST INTERIM STATUS REPORT OF RECEIVER

Claire M. Schenk, the Receiver for Defendants Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, LP (“ATP”), MCI VII, LLC (“MCI VII”), and Gryphon Investments III, LLC (“Gryphon Investments”) (collectively the “Receivership Entities”), submits her First Interim Status Report relative to acts and transactions undertaken since her appointment as Receiver on January 17, 2012.

I. BACKGROUND OF THE RECEIVERSHIP

Acartha Group is a Delaware limited liability company incorporated in February 2003, with its principal place of business in Clayton, Missouri. It also maintains an office in East Brunswick, New Jersey. Acartha Group was established as a private equity fund management company. Acartha Group is the managing member of MIC VII and also manages Gryphon Investments.



MIC VII is a Delaware limited liability company incorporated in March 2005, with its principal place of business in Clayton, Missouri. MCI VII is a private equity fund formed to invest in early to mid-stage companies primarily in the financial and technology sectors.

ATP is a Delaware Limited Partnership organized in April 2008, with its principal place of business in Clayton, Missouri. ATP is a private equity fund formed for the same purpose as MIC VII.

Gryphon Investments is a Delaware limited liability company incorporated in February 2003, with its principal place of business in Clayton, Missouri. Gryphon Investments is the general partner of ATP.

On January 17, 2012, the United States Securities and Exchange Commission (the “SEC”) filed its *Complaint for Injunctive and Other Relief* (the “Complaint”) against Burton Douglas Morriss (“Morriss”), the Receivership Entities and Morriss Holdings, LLC (collectively, the “SEC Defendants”) in the United States District Court for the Eastern District of Missouri (the “Missouri District Court”), Case No. 4:12-cv-00080-CEJ (the “SEC Case”). *See* Complaint (Dkt. No. 1). In the Complaint and other papers filed by the SEC on January 17, 2012, the SEC alleges various securities laws violations by the SEC defendants.

Also, on January 17, 2012, the SEC moved for the immediate appointment of a receiver over the Receivership Entities to (i) administer and manage the business affairs, funds, assets, choses in action and other property of the Receivership Entities, (ii) act as sole and exclusive managing member or partner of the Receivership Entities, (iii) maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the Receivership Entities’ estate, (iv) marshal and safeguard all of the assets of the Receivership Entities, and (v) take whatever actions are necessary for the protection of investors. The Court

entered the requested relief by order dated January 17, 2012 (the “Receivership Order”). *See* Receivership Order (Dkt. No. 16).

Also, on January 17, 2012, the SEC moved for the entry of an order freezing the assets of the Receivership Entities and Morriss Holdings, an order requiring sworn accountings from the Receivership Entities and Morriss Holdings, an order prohibiting the destruction of documents, and an order expediting discovery. The Court entered the requested relief by order dated January 17, 2012 (the “Asset Freeze Order”). *See* Asset Freeze Order (Dkt. No. 17).

II. OPERATION OF THE RECEIVERSHIP

A. General Operations

The overall function of the Receiver as set out in the Receivership Order is to administer and manage the business affairs and assets of the Receivership Entities, act as the managing member or partner of the Receivership Entities, marshal and safeguard all of the assets of the Receivership Entities and take such actions as are necessary to protect investors. In furtherance of these objectives and following her appointment, the Receiver secured all assets and business records obtainable from the two known business locations of the Receivership Entities. With respect to the Clayton location, the Receiver was provided a lease agreement showing that the premises were leased by Morriss Holdings and that the Receivership entities did not hold a sublease. For this reason, documents, electronic data and assets identified by the Defendant Morriss as belonging to the Receivership Entities were removed to the offices of the Receiver. The New Jersey premises have been secured by agents of the Receiver and business and financial records as well as electronically stored information located therein are being reviewed by the Receiver and her counsel and agents.

B. Notice of Receivership

i. Constructive Notice: The Receiver has given constructive notice of the Receivership proceedings in a widely disseminated press release. That release provided information regarding the Receiver's website, email and voice mail contact information. The Receiver's website, in turn, provided links to the actual Order Appointing Receiver and the Order Freezing Assets.

ii. Actual notice: Immediately after the entry of the Receiver and the Asset Freeze Orders, copies of those orders were served upon all entities believed to have possession of any property of the Receivership estate. In addition, the Receiver filed copies of the Complaint and Receivership Order with virtually every United States District Court in the country and completed and provided the requisite IRS Form 56 to the Internal Revenue Service. Contacts are being made on an ongoing basis with known account and property holders, including banks and portfolio investment concerns, investment advisors, creditors, and former officers, directors, employees, attorneys, accountants, investors and others. Active efforts are being made to continue to develop and refine the Receiver's master contact list of interested and affected individuals so that interested parties will receive actual notice of the Receivership proceedings and all material events occurring within those proceedings.

C. Personnel

i. Current personnel: Pursuant to paragraph 4 of the Receivership Order (*see* Receivership Order (Dkt. No. 16)), Thompson Coburn LLP is serving as legal counsel to the Receiver. Stephen B Higgins is serving as Chief Counsel to the Receiver and utilizing the resources of other lawyers and staff at Thompson Coburn as needed. The Receiver is assessing the need for the retention of additional personnel to assist in the administration of the

Receivership estate, including qualified accountants, investment advisors and other expert consultants.

ii. Former personnel: Individuals employed by the Receivership Entities at the time of the entry of the Receivership Order have been notified that, pursuant to the Order, they no longer possess any authority to act on behalf of the Receivership entities in any capacity except as otherwise authorized by the Receiver. These individuals have also been notified that any contractual relationships with the Receivership Entities have been terminated, subject to possible further negotiation. The Receiver is also providing similar notification to all lawyers, accountants and other service professionals engaged by the Receivership Entities.

D. Miscellaneous Operational Matters

1. *Financial Accounts*

The Receiver is informed that as of January 23, 2012, the Receivership Entities cash position is \$59,717. Efforts are continuing to obtain and examine bank statements and other financial and other records to verify and update this information.

2. *Tax Returns*

The Receiver is informed that the Receivership entities are current in all federal, state, and local tax filings.

3. *Corporate Compliance*

The Receiver is informed that all of the Receivership Entities are in compliance with necessary state and federal registration requirements.

E. Website

The Receiver is in the process of establishing a website to provide relevant information to investors, to receive claim information from investors and to otherwise facilitate communication

with investors, potential claimants and other interested individuals. As of the date of this Report, access to such information is being provided through a weblink on the website of Thompson Coburn LLP.

F. Physical Lockdown of Assets and Premises

Immediately upon the Court's entry of the Receivership Order, the Receiver initiated efforts to lock down the assets and records of the Receivership Entities. On that same date, the Receiver attempted to take complete physical control of the Entities' office premises at 7820 Maryland Avenue, Clayton, MO but was unable to do so after determining that the Entities were no more than informal subtenants on premises leased by Relief Defendant Morriss Holdings. Physical inspections of the premises were conducted nonetheless on January 17 and 18 and business, financial and other records were collected and removed to the offices of Thompson Coburn LLP. Efforts were also undertaken at that location to obtain copies of electronically stored information of the Entities that was reportedly maintained on a file server owned by Morriss Holdings, Inc. Defendant Morriss and his counsel refused to provide the Receiver with direct access to this file server hard drive, so a mirror image of the hard drive was forensically taken into the custody of a third party forensic data service. The Receiver was also refused access to computers on the premises under the control of Brian Ziebart, reportedly the former controller of Morriss Holdings. Ziebart advised representatives of the Receiver that electronically stored information belonging to the Entities was no longer on the hard drive of his computer. Ziebart and counsel for Morriss, however, refused requests to obtain a forensic copy the hard drive.

Simultaneously on January 17, the Receiver took physical possession and control of the premises of the Entities at 2 Tower Center Blvd., East Brunswick NJ and the contents of those

premises. Specifically, the Receiver (i) took control of all business and financial records, including electronically stored information on various hard drives, (ii) took control of all access to the premises, including all keys and access cards of employees, (iii) posted full-time security and (iv) changed the locks. Email and other electronic records stored by third party email vendors were also locked down and the process of obtaining and analyzing copies of such records begun on January 17. Counsel for the Receiver began interviews with the principal employees on January 17 and continued the interviews through January 24.

At both the Clayton and East Brunswick locations it was apparent to counsel for the Receiver that there was a significant overlap between the business and financial functions of the Receivership Entities and the Relief Defendant Morriss Holdings. It also became evident, during interviews and inspections, that while Morriss Holdings acted as a manager of the Receivership Entities, and controlled and provided computer and office support to those Entities, that counsel for the Receiver was not being provided full access to the records of the Receivership Entities being held by Morriss Holdings. Counsel remains concerned that further delay in obtaining these records might risk their loss or destruction.

G. Other Proceeding

Acartha Group, LLC, Acartha Technology Partners LP and MIC VII, LLC each filed Chapter 11 proceedings in the Bankruptcy Court for the District of Delaware on January 8, 2012 as Case No. 12-10123-BLS, Case No. 12-10124-BLS, and Case No. 12-10125-BLS, respectively. Upon emergency motion of the Receiver filed with the Delaware Bankruptcy Court on January 23, 2012 and heard on January 25, 2012 before the Honorable Judge Brendan Shannon, the Receiver obtained an order dismissing each of these Chapter 11 proceedings and

requiring a return of any retainer held by any of the entities' prior bankruptcy counsel and an accounting for the use of those funds.

Burton Douglass Morriss is the subject of Chapter 11 proceedings commenced on January 9, 2012 pending before the Bankruptcy Court for the Eastern District of Missouri (Eastern Division) as Case No. 12-40164. The Receiver has entered her appearance in this case. At this time, Mr. Morriss has yet to file his bankruptcy disclosure papers, including Schedules of Assets and Liabilities, and has until January 27, 2012 to do so. If papers are not timely filed, the case may be dismissed. The Receiver is monitoring this proceeding and evaluating next steps. If the case remains pending, a meeting of creditors is scheduled for February 7, 2012.

On January 23, 2012, the Receiver filed a Notice of Order Staying Litigation in the case of Nixon et al v. B. Douglas Morriss et al pending in the Circuit Court of St. Louis County Missouri.

IV. ANALYSIS OF ASSETS FROZEN BY COURT ORDER

In its Asset Freeze Order and Other Emergency Relief ("Asset Freeze Order"), entered January 17, 2012, the Court restrained the Receivership Entities and Morriss Holdings, LLC, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of the Receivership Entities or Morriss Holdings, LLC. *See* Asset Freeze Order (Dkt. No. 17). The Court also directed all financial or brokerage

institutions or other persons or entities located within the jurisdiction of the United States Courts and holding any such funds or other assets in the name, for the benefit, or under the control of the Receivership Entities or Morriss Holdings, LLC, having notice of the Asset Freeze Order, to hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets. *See* Asset Freeze Order (Dkt. No. 17).

To date, the Receiver has obtained a number of schedules and supporting documentation previously prepared by the Receivership Entities setting forth in detail the identities of investors, the amounts they invested in the Receivership Entities and the various portfolio companies in which the Receivership Entities had made investments. The Receiver has not yet been able to conduct a meaningful analysis of those schedules or supporting documents.

V. CLAIMS BROUGHT BY THE RECEIVERSHIP AND LITIGATION MATTERS

As of this date, the Receiver is reviewing information so that it may assess whether it should institute claims against any individuals or entities.

VIII. CONCLUSION

The Receiver will update this Report on a periodic basis to summarize her ongoing activities and identify additional assets that have been secured. A comprehensive Receiver's Report will be filed on at least an annual basis.

Dated: January 26, 2012

Respectfully submitted,

/s/ Claire M. Schenk

Claire M. Schenk, Receiver