

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

**RECEIVER’S MOTION FOR ENTRY OF AN ORDER
APPROVING AND CONFIRMING THE RECEIVER’S
FIFTEENTH INTERIM STATUS REPORT**

By Order entered January 17, 2012, the Court appointed Claire M. Schenk as Receiver (the “Receiver”) over Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP and Gryphon Investments III, LLC (collectively, the “Receivership Entities”).

The Receiver herein moves this Court for entry of the proposed Order Approving and Confirming her Fifteenth Interim Status Report of Receiver, filed simultaneously herewith as Exhibit A to this Motion.

This motion is administrative and not adversarial in nature.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: July 24, 2015

By /s / Kathleen E. Kraft

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2015, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system which will send a notice of electronic filing to the following:

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/s/ Kathleen E. Kraft

EXHIBIT A

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

FIFTEENTH INTERIM STATUS REPORT OF RECEIVER

Claire M. Schenk (the “Receiver”), 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 this **Fifteenth Interim Status Report** to update the Court on the activities of the Receiver occurring since May 6, 2015:

A. Claims Process

Objections to three claims are pending before the Court.¹ Two of these objections have been fully briefed and await the determination of the Court. The Receiver anticipates resolving the remaining objection as part of a settlement between the claimant and the Receiver, which settlement is pending Court approval.

¹ The Receiver has described the Claims Process in detail in preceding reports and will not repeat those details herein (*see* Receiver’s Ninth, Tenth, Eleventh, and Twelfth Interim Status Reports, Dkt. Nos. 315-1, 328-1, 338-1, and 358-1).

The first fully briefed objection pertains to Blink Marketing (“Blink”), Claimant No. 22. Blink filed its Objection with the Court on May 20, 2015, objecting to the Receiver’s Notice of Determination which denied the Blink claim in part. The Blink objection was based upon an alleged contract for website redesign work. The response filed by the Receiver on June 19, 2015 states that Blink did not provide sufficient supporting documentation to support its claim. Blink has not replied and this matter appears to be ripe for determination by the Court.

The second fully briefed objection pertains to Hany Teylouni (former management), Claim No. 20 (*see* Dkt. No. 337). Based upon information received following the briefing of the objection to the Receiver’s disallowance of Mr. Teylouni’s claim, the Receiver filed a supplemental filing with the Court on March 19, 2015 (*see* Dkt. No. 378). Mr. Teylouni’s objection has now been fully briefed and awaits decision by the Court.

The third objection pertains to UHY Advisors MO, Inc. (“UHY”) (former professional-services provider), Claim No. 16 (*see* Dkt. No. 332). UHY and the Receiver have sought to resolve UHY’s claim as part of a settlement between UHY and the Receiver (the “UHY Settlement”). The UHY Settlement was submitted for the approval of the Court on June 26, 2015 (Dkt. Nos. 398, 399). No objections have been filed or received, and the Receiver has filed a request for consideration and determination with the Court (*see* Dkt. No. 401).

B. Analysis of Affirmative Legal Claims and Related Proceedings

Pursuant to paragraph 2 of the Order Appointing Receiver (Dkt. No. 16; “Receivership Order”), the Receiver is directed to investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities, as the Receiver deems necessary against those individuals and entities that the Receiver may claim have directly or indirectly misappropriated

or transferred monies. As authorized by paragraph 6 of the Receivership Order, the Receiver may defend, compromise, or settle legal actions in which the Receivership Entities are parties, with authorization of the Court. In keeping with the directives of the Court, the Receiver has developed the following matters during this reporting period.

1. The UHY Parties

In keeping with the above-described authorities, and as the Receiver described in the Fourteenth Interim Status Report, the Receiver continued to work with her retained counsel, Spencer Fane Britt & Browne LLP, to negotiate the settlement documentation involving UHY, Patrick Stark, and Brian Peterson (collectively, the “UHY Parties”). During this reporting period, the parties finalized and executed an agreement that was submitted for the approval of the Court on June 26, 2015 (Dkt. Nos. 398, 399). As reported therein, the settlement resolves the assertion of certain civil claims that the Receiver believes she holds against the UHY Parties on behalf of the Receivership Entities, arising out of alleged acts and omissions of the UHY Parties in the provision of professional services to the Receivership Entities, during the period March 3, 2009 until shortly before the commencement of the Receivership (the “Receiver’s Claims”). These claims were asserted on behalf of the Receiver by the Receiver’s retained counsel, Gerald P. Greiman and Richard Lageson of Spencer Fane Britt & Brown LLP (“Retained Counsel”).² In the settlement agreement, the UHY Parties agree to a payment of \$2.3 million and the Receiver agrees to withdraw the Notice of Determination recommending that the Court disallow Claim No. 16. Pursuant to the engagement letter with Retained Counsel, 25 percent of that sum, *i.e.*, \$575,000, will be paid directly to Retained Counsel. The remaining sum, \$1,725,000, will be paid to the accounts of the Receivership Entities. There is no agreement between the UHY

² The Receiver retained Gerald P. Greiman and Richard Lageson of Spencer Fane Britt & Brown LLP pursuant to an engagement letter executed on September 13, 2013, which was approved by the Court on December 13, 2013 (ECF No. 304).

Parties and the Receiver as to whether or not UHY will receive any portion of the funds which ultimately may be distributed in this proceeding. The Agreement includes a mutual release. No objections have been filed or received, and the Receiver has filed a request for consideration and determination with the Court (*see* Dkt. No. 401).

2. *John Wehrle, Gryphon Investments, II, LLC and Cirqit.Com, Inc.*

On March 13, 2015, the Receiver filed a complaint against John Wehrle, Gryphon Investments II, LLC (“Gryphon II”), and Cirqit.Com, Inc. (“Cirqit”) alleging that the contributions of Gryphon III investors were improperly comingled with the funds of Gryphon II and transferred to Mr. Wehrle, Gryphon II, Cirqit, and others. Claims include breach of contract and breach of fiduciary duty against Mr. Wehrle, fraudulent transfers against Mr. Wehrle, Cirqit and Gryphon II, along with other equitable and tort claims. On April 27, 2015, defendants responded with an answer and motion to dismiss various counts of the complaint. The Receiver’s response in opposition to the Motion to Dismiss was filed on May 25, 2015. Replies were filed by the defendants on June 11, 2015. This matter is now fully briefed and awaits the determination of the Court. The Joint Scheduling Plan was filed by the parties on July 17, 2015, and the scheduling conference with the Court is set for August 6, 2015. A trial date has not yet been set but the matter was assigned to Track 2. This means that the earliest possible date that this matter will be heard is August 15, 2015. The Receiver will make her mandatory initial disclosures to defendants by August 5, 2015.

The indictment returned against John Wehrle on January 7, 2015, remains pending. The defendant has entered a plea of not guilty. The trial date is currently set for Monday, October 19, 2015.

3. *Personal Bankruptcy of Burton Douglas Morriss*

The deadline for the Receiver and the Receivership Entities to object to dischargeability of claims against Morriss was extended until October 30, 2015. Further extensions are unlikely. Eric Sarasin is the only other creditor that sought to extend the deadline to object to dischargeability of his claim against Morriss. The Trustee's Interim Report, which identifies available funds and the likely direction of the bankruptcy matter, was recently made available to the Receiver. The Receiver and her counsel have been assessing and analyzing the appropriate course of action in view of the available information.

C. Business Operations and Administrative Matters

As directed by the Court, the Receiver continued to oversee the holdings of the Receivership Entities in the remaining portfolio company investments. The Receiver participated in board and calls with management involving the portfolio concerns, reviewed periodic updates by management as to financials and operations involving the portfolio entities, analyzed information and handled compliance matters pertaining to potential tax claims and liability. The Receiver discussed liquidation and sale opportunities of the remaining portfolio concerns during this reporting period.

The initial distribution of funds reported in the Fourteenth Interim Status Report for one of the Receivership portfolio companies, Librato, has occurred. Consistent with the Receiver's last report, funds were received in the total amount of \$1,459,642.99, as follows: ATP, \$164,662.33; MIC VII, \$438,998.08; Evergrid Acquisition, LLC, \$16,270.84; Evergrid/MIC VII, LLC, \$87,404.75; Librato Acquisition II, LLC, \$752,306.99. Following receipt of the shares, original stock certificates were returned and the Receiver registered with Shareholder Representative Services ("SRS") in order to monitor the remaining funds in escrow which totalled \$191,042.96.

As stated by SRS, this sum was placed in escrow in order to reimburse the buyer for potential damages and in keeping with the terms of the acquisition agreement. The Receiver understands that escrow release is 18 months after closing or July 28, 2016. These funds are subject to indemnity claims against the escrow fund but the Receiver is advised that the parties are currently not aware of any claims. The Receiver anticipates that the distributions allocated to the Receivership Entities, ATP and MIC VII, will be a part of the claims distribution process to be determined by the Court. Distributions to Evergrid Acquisition, LLC, Evergrid/MIC VII, LLC, and Librato Acquisition II, LLC (the “SPVs”) will also be made subject to Court approval but as part of a separate process since the SPVs are not subject to the claims distribution process. The Receiver has been working with her agents to assess the relevant interests and to develop a plan of distribution for the consideration of the Court. Subject to completion of that process, the Receiver plans to submit a motion in the coming weeks.

D. Tax Matters

During this reporting period, the Receiver reviewed and processed payments for nineteen entities for Delaware franchise taxes. The Receiver anticipates that K-1s will be provided to investors in the first week of August and that all filings will be handled in a timely manner. A number of other issues involving various states tax matters were handled during this reporting period.

E. Administrative Matters

An updated copy of the Standardized Fund Accounting Report (“SFAR”) is being submitted along with the Receiver’s Fourteenth Interim Fee Application (for the second quarter of this year, covering April through June). This report reflects known and current bank balances for the Receivership Entities and the accounts otherwise subject to the control of the Receiver. It

also shows expenses and payments during this quarter. A final and fully detailed report will be submitted to the Court at the conclusion of the Receivership.

The Receiver has continuously updated the general website hosted by Thompson Coburn LLP (which is linked to the website for the District Court for the Eastern District of Missouri). Additionally, she has continued to post documents on the extranet sites created for the investors. Access to the extranet sites is allowed subject to receipt of a nondisclosure agreement by the investors. Each site is periodically updated with information pertinent to business operations, *e.g.*, slide decks or presentations and transactional documents involving additional financings or other significant events. Claimants, investors, and other interested parties are encouraged by the Receiver to visit the sites that are available to them so that they will have a current understanding of Receivership operations and to avoid unnecessary expense through repeated individualized communications with the Receiver and her counsel.

Conclusion

The Receiver will continue to update this Report on a periodic basis to summarize relevant Receivership activities.

Dated: July 24, 2015

Respectfully submitted,

/s/ Claire M. Schenk
Claire M. Schenk, Receiver

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

ORDER

Upon the Receiver’s Motion for Entry of an Order Approving and Confirming the Fifteenth Interim Status Report of Receiver, filed by Claire M. Schenk, the court-appointed receiver (the “Receiver”) for Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP and Gryphon Investments III, LLC in this action; and

Having fully considered the Motion and the Fifteenth Interim Status Report and being duly advised as to the merits,

THE COURT DOES HEREBY ORDER THAT

1. The Receiver's Motion is granted in its entirety; and

2. The Fifteenth Interim Status Report of Receiver for the period May 7, 2015 through July 24, 2015, and every act and transaction reported therein, are hereby approved and confirmed.

SO ORDERED this _____ day of _____ 2015

THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT COURT JUDGE