

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
SEVENTEENTH 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 to approve and confirm the Seventeenth Interim Status Report of Receiver—filed as Exhibit A to this Motion—and every act and transaction reported in the Seventeenth Interim Status Report.

This motion is administrative and not adversarial in nature.

Respectfully Submitted,

THOMPSON COBURN LLP

Dated: February 8, 2016

By /s / Kathleen E. Kraft

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2016, 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

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

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

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

SEVENTEENTH INTERIM STATUS REPORT OF RECEIVER

Claire M. Schenk (the “Receiver”), the receiver for defendants Acartha Group, LLC (“Acartha Group”), Acartha Technology Partners, LP (“ATP”), MIC VII, LLC (“MIC VII”), and Gryphon Investments III, LLC (“Gryphon Investments”) (collectively, the “Receivership Entities”), submits this **Seventeenth Interim Status Report** to update the Court on the activities of the Receiver occurring since October 28, 2015:

A. Analysis of Affirmative Legal Claims and Related Proceedings

Pursuant to paragraph 2 of the Order Appointing Receiver (ECF 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 pursued the following litigative matters during this reporting period.

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

As described in previous reports, the Receiver, on behalf of Gryphon III, filed suit against John Wehrle, Gryphon Investments II LLC (“Gryphon II”), and Cirqit.Com, Inc. (“Cirqit”) (collectively referred to as the “Wehrle defendants”) alleging that \$3.425 million of funds raised from eleven Gryphon III investors were fraudulently and improperly comingled with the funds of Gryphon II and transferred to the Wehrle defendants and others. (*See* ECF No. 416) In an effort to avoid the time, expense, and risk associated with the litigation, the Receiver engaged in successful settlement negotiations through two days of formal mediation with the Wehrle defendants. Following numerous exchanges of drafts of the settlement agreement between the parties, a third day of mediation was scheduled in an effort to finalize the details of the agreement and related documentation. As a result, all parties and counsel met at the offices of Richard Sher on December 4, 2015 and worked throughout the day to develop the final language of the agreement. Subsequently, following further discussion and the exchange of documentation required under the agreement, the Receiver was presented with an agreed-upon final version signed by the Wehrle defendants. On Tuesday, December 29, 2015, the Receiver executed the settlement agreement.

Having finalized the settlement agreement, the Receiver prepared a motion and memorandum seeking Court approval of the settlement, which included a sale of Receivership interests in Cirqit. (ECF Nos. 428, 429, & 433) As stated in the Receiver’s filing, the Agreement provided that: the Receivership estate will receive a cash payment of \$125,000;

Wehrle will provide a signed and sworn financial statement; a consent judgment of \$875,000 will be entered against Wehrle; Cirqit stock will be retitled in the name of Gryphon III; and the Wehrle defendants will use their best efforts to assist the Receiver to redeem the Receivership's interests in Cirqit for the planned purchase price of \$1,489,201. (*See* ECF No. 429-2)

The Court was advised that effectuation of the Agreement was in the best interests of the Receivership estate for the following reasons: (1) the settlement avoids the potential for long and protracted litigation along with the risk associated with the litigation: (2) it reduces collectability risks for the Receivership estate, given that Wehrle's financial statement reflects a negative net worth and the Honorable Ronnie L. White accepted Wehrle's plea to a felony on January 19, 2016 with sentencing scheduled to occur on April 20, 2016; (3) settlement brings additional funds for distribution to allowed claimants and the Receivership proceeding closer to resolution; and (4) the Receivership estate will avoid additional attorneys' fees, the time and expense of oversight of the Wehrle Case by the Receiver, and expenses associated with litigation against the Wehrle defendants, including but not limited to deposition costs, transcripts, travel expenses, copying costs, and expert witness fees. In addition to the reasons recited by the Court as support for the Settlement Agreement with the Wehrle defendants, the Receiver's motion for the sale of the interest in Cirqit was supported by a report prepared by a well-qualified valuation expert, Ed Morris of Clifton Larson Allen. A copy of the motion and memorandum was served upon counsel of record and the interested parties and posted on the Receiver's general website as well as the Receiver's secure investor extranet site. No objections were filed or received and the Court was notified of this fact. As a result, the Receiver's motion was granted on January 22, 2016. (ECF No. 435)

The previously described settlement events are sequential, the first being the sale of the Receiver's interest in Cirqit. Since receiving notice of the approval of the Court on January 22, 2016, the Receiver has been in communication with counsel for the Wehrle defendants regarding the sale of the Receiver's interests. The Receiver was advised that the Wehrle defendants have taken the steps necessary to complete the transaction, that it is still on track for completion, and that LogicSource is moving forward with the purchase. The Receiver has requested additional time from Judge Sippel in the litigation against the Wehrle defendants in order to complete the settlement. On January 22, 2016, Judge Sippel entered an Order granting the Receiver's request and extending the date for dismissal of the proceeding until March 22, 2016. The Receiver will continue her efforts to monitor and facilitate effectuation of the Agreement in the coming weeks.

2. *Personal Bankruptcy of Burton Douglas Morriss*

During this reporting period, the Bankruptcy Court entered an order in favor of Holly Morriss, Mr. Morriss's former wife, in the adversary proceeding filed by Ms. Morriss. (Adv. Proc. No. 15-04213) Ms. Morriss sought, and on January 28, 2016 was granted, an order confirming that the debts held by her against Mr. Morriss (family support/maintenance and property settlement) are non-dischargeable. (*Id.* ECF No. 13) The January 28, 2016 court order confirmed that Mr. Morriss is obligated to Ms. Morriss for non-dischargeable obligations exceeding \$2,000,000 and that she is entitled to be awarded amounts due post-discharge. In addition to the \$2,000,000 owed as the result of the unpaid portion of the property settlement, Mr. Morriss' obligation to pay monthly payments of \$12,500 continues beyond discharge, along with the sums in arrears as the result of his failure to make monthly payments. (*See id.* ECF No. 13)

On November 24, 2015, the Bankruptcy Court entered its Discharge of Debtor, noting that certain types of debts were not discharged, including, “domestic support obligations,” “debts for most taxes,” and “debts for most fines, penalties, forfeitures, or criminal restitution obligations.” As previously reported, on or about September 9, 2015, the U.S. Internal Revenue Service (“IRS”) amended its proof of claim in the Morriss bankruptcy from \$0 to \$6,241,516.71 for a priority claim against the bankruptcy estate (Case No. 12-40164, Claim 3-3) and the U.S. Securities and Exchange Commission amended its proof of claim to identify its judgment in the total amount of \$9,516,090.71. (*Id.*, Claim 9-2, Parts 1, 2) Thus, nondischargeable claims appear to amount to at least \$17,757,06 (exclusive of domestic support obligations in arrears and continuing support obligations of \$12,500 per month). Mr. Morriss remains incarcerated without a source of income or available assets to satisfy these claims. In considering what action, if any, to take in the bankruptcy proceeding prior to the discharge, the Receiver considered the vast sums owed by Mr. Morriss, his apparent lack of resources to satisfy these sums, and the potential for overlap between sums which might be claimed by the Receiver and the pre-existing established claim of the SEC. In light of these factors and the considerable expense which would be involved in contesting discharge, the Receiver refrained from further action in the bankruptcy proceeding. To the extent that a change in Mr. Morriss’s financial circumstances occurs at a future date, the Receiver will cooperate with the SEC in its collection efforts and/or explore the feasibility of a claim of under 11 U.S.C. § 523(a)(19) (excepting from discharge any debt arising from the violation of any of the Federal securities laws).

B. Claims and Distribution Process*1. Distributions*

As reported in the Sixteenth Interim Status Report, on October 14, 2015, the Receiver filed a motion with the Court seeking authority for the distribution of the Librato funds reported in the Fourteenth Interim Status Report. (See ECF Nos. 413, 414, 416) The Receiver's motion pertained to three of the special purposes vehicles ("SPVs"), which are not part of the Receivership estate but are managed by the Receivership entity, Acartha Group. As a result of the sale described in the Receiver's motion, funds (gross proceeds) were received as follows:

Evergrid Acquisition, LLC	\$16,270.84
Evergrid/MIC VII, LLC	\$87,404.75
Librato Acquisition II, LLC	\$752,306.99
ATP ¹	\$164,662.33
MIC VII	\$438,998.08

As part of her submission to the Court, the Receiver included a detailed schedule of distribution prepared by the Receiver's accountant, listing the known members of each entity, the proposed amount of distribution to each member, and the actual and estimated expenses for legal, accounting, and other potential fees. In addition to the normal service process, the Receiver served this motion upon either the members or their named representatives. No objections were filed with the Court and the Receiver's motion was granted during this reporting period on November 9, 2015. (ECF No. 423)

Subsequently, the Receiver worked with East West Bank and each of the members listed in the distribution schedules approved by the Court to accomplish the various wire transfers. Distributions were made to investors in the Evergrid/MIC VII, LLC and Librato Acquisition II,

¹ The funds received by ATP and MIC VII as a result of the sale described in the Receiver's October 14th Motion are not the subject of the relief requested in that motion. The Receiver's motion pertains only to the funds received by the Librato SPVs. The Receiver anticipates that the funds received by ATP and MIC VII (both gross proceeds and escrowed proceeds) will be disbursed in connection with a plan of distribution approved by the Court.

LLC special purpose vehicles. A total of \$708,240 was distributed to the 46 members of Librato Acquisition II and a total of \$60,361 was distributed to the 18 members of Evergrid/MIC VII. The bulk of these distributions occurred on December 15, 2015. However, a few of the distributions were made in later weeks due to “bounce backs” as the result of incorrect information provided to the Receiver and/or continuing efforts to locate the necessary transfer information for the wire transfers.

Based upon the information currently available to the Receiver, there will be additional disbursements to the SPVs following receipt of the funds currently held in escrow. The Receiver has not been advised of any significant claims against those funds. As of July 31, 2015, the escrowed amounts potentially available for distribution to the three SPVs totalled approximately \$111,500. Monthly statements and updates are provided to the Receiver by the escrow agent, SRS Acquiom (“SRS”). The SRS statement provided to the Receiver for the period ending December 31, 2015, indicates that the release of the escrowed funds is planned for July 29, 2016. However, SRS requests that it be allowed up to fifteen business days after the date shown to receive the listed proceeds. This most recent statement from SRS confirms that there are no outstanding claims against the escrowed proceeds as of the end of 2015.

2. *Claims*

Objections to two claims determinations remain pending before the Court.² The first fully briefed objection pertains to a vendor, Blink Marketing (“Blink”), Claimant No. 227. Blink filed its objection with the Court on May 20, 2015, objecting to the Receiver’s Notice of

² 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, ECF Nos. 315-1, 328-1, 338-1, and 358-1).

Determination, which denied the Blink claim in part. The Blink claim was based upon an alleged contract for website redesign work. This matter is ripe for determination by the Court.

The second fully briefed objection pertains to Hany Teylouni (former management), Claim No. 20. (*See* ECF No. 337). Based upon information received following the briefing of the objection to the Receiver's disallowance of Teylouni's claim, the Receiver filed a supplemental filing with the Court on March 19, 2015. (*See* ECF No. 378). Teylouni's objection has now been fully briefed and awaits decision by the Court.³

As to the funds to be disbursed to allowed claimants seeking funds from Acartha, ATP, MIC VII and Gryphon III, the Receiver will prepare and propose a plan of distribution to the Court. The Receiver intends to seek approval of her recommendations for allowance and disallowance of all filed claims through the proposed distribution plan

C. **Business Operations**

As directed by the Court, the Receiver continues to oversee the holdings of the Receivership Entities in the remaining portfolio company investments. During this reporting period, the Receiver participated in a board call with management involving one of the portfolio concerns, reviewed updates by management as to financials and operations involving remaining the portfolio entities, and analyzed information and handled compliance matters pertaining to potential tax claims and liability.⁴ Additionally, the Receiver discussed liquidation and sale opportunities pertaining to one of the remaining portfolio concerns during this reporting period

³ There had been a third objection, pertaining to UHY, but that objection was resolved pursuant to the Court-approved settlement described in previous status reports.

⁴ As explained *infra*, additional information is available to the investors on a secure site and subject to execution of an NDA. The specifics pertaining to the information discussed herein is considered confidential by the Receivership portfolio concerns.

and sought information from the Receiver's valuation consultant, Ed Morriss, regarding this potential opportunity.⁵

D. Tax Matters

During this reporting period, the Receiver worked closely with her accountants to complete and file Form 1096, Annual Summary and Transmittal of U.S. Information Returns, with the Internal Revenue Service and to identify all payments made by the Receiver in order to timely submit 1099s, Miscellaneous Income, to the various vendors for whom this documentation is required, including CliftonLarsonAllen LLP, Segue Partners LLC, Spencer Fane Britt & Browne, Thompson Coburn LLP, and Sher Corwin Winters. Additionally, given that the 2015 tax year was recently concluded, the Receiver is working with Segue to close the books for the year in order to begin preparations for all tax filings for that year.

In recent weeks, the Receiver has reviewed and authorized payments to CT Corporation ("CT"), the registered agent for seventeen of the various active entities managed by the Receiver, including Acartha Group; Acartha Merchant Partners, LLC; ATP; Clearbrook Acquisition; Clearbrook Acquisition Capital; Evergrid Acquisition; Evergrid MIC VII; Gryphon Investments III; Integrien Acquisition Capital II; Librato Acquisition II; Librato Capital II; MIC VII; Tervela Acquisition II; Tervela Acquisition III; Tervela Acquisition; Tervela Capital II; and Tervela Capital III. For those entities where distributions and activity have been completed and final returns filed, CT's services will be discontinued and payment of Delaware franchise taxes will cease as the entities are inactive.

⁵ The sale of the Receivership interests in Cirqit are outlined *infra*.

E. Administrative Matters

An updated copy of the Standardized Fund Accounting Report (“SFAR”) will be submitted along with the Receiver’s Sixteenth Interim Fee Application (for the fourth quarter of this year, covering October through December). This report reflects known and current bank balances for the Receivership Entities and the accounts of the SPVs, which are managed by the Receiver. It also reflects expenses and payments during this quarter. A final and fully detailed report will be submitted to the Court at the conclusion of the Receivership.

Payment of fees and expenses to the service professionals providing assistance to the Receiver are current through those submitted as part of the Receiver’s Fifteenth Interim Fee Application. As part of each Fee Application, expenses have been paid in full although the Receiver has agreed, after discussion with the SEC, to a twenty percent holdback of funds payable for professional services. Recently, with the consent of the SEC and pursuant to the Court’s Order of January 20, 2016, fifty percent (50%) of the outstanding amount of the holdback was paid to the attorneys and professionals who have assisted the Receivership since its inception. (*See* ECF No. 434)

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: February 8, 2016

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 Seventeenth 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 Seventeenth 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 Seventeenth Interim Status Report of Receiver for the period October 28, 2015 through February 8, 2016, and every act and transaction reported therein, are hereby approved and confirmed.

SO ORDERED this _____ day of _____ 2016

THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT COURT JUDGE