

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**BRENDA SMITH, BROAD REACH
CAPITAL, LP, BROAD REACH
PARTNERS, LLC, and BRISTOL
ADVISORS, LLC,**

Defendants.

C. A. No. 2:19-cv-17213 (MCA)

Motion Day: Feb. 21, 2023

**NOTICE OF FOURTH MOTION OF RECEIVER, KEVIN DOOLEY
KENT, FOR PERMISSION TO INITIATE LITIGATION ON
BEHALF OF THE RECEIVERSHIP ESTATE**

PLEASE TAKE NOTICE that the undersigned, on behalf of the Receiver, Kevin Dooley Kent, will move before the Honorable Madeline Cox Arleo, U.S.D.J., United States District Court for the District of New Jersey, Martin Luther King Jr. Federal Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101, on February 21, 2023, or as soon thereafter as the Court permits, at a date and time to be determined by the Court, for permission to initiate litigation on behalf of the Receivership Estate.

PLEASE TAKE FURTHER NOTICE THAT, in support of this Motion, the undersigned will rely upon the accompanying Memorandum of Law, which is incorporated herein by reference.

PLEASE TAKE FURTHER NOTICE that the undersigned requests that the proposed form of Order submitted herewith be entered by the Court.

Respectfully submitted,

Dated: 1/16/2023

s/ Robin S. Weiss
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**MEMORANDUM OF LAW IN SUPPORT OF FOURTH MOTION OF
RECEIVER, KEVIN DOOLEY KENT, FOR PERMISSION TO INITIATE
LITIGATION ON BEHALF OF THE RECEIVERSHIP ESTATE**

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Dated: 1/16/2023

Pursuant to the Court’s Order Appointing Receiver dated June 29, 2020, Kevin Dooley Kent, Receiver, hereby moves this Court for permission to initiate litigation on behalf of the Receivership Estate. In support of this Motion, the Receiver states as follows.

I. STATEMENT OF FACTS

The Receiver, Kent Dooley Kent, has been appointed by Order of this Court dated June 29, 2020 (“Receivership Order”), to assume control of, marshal, pursue and preserve the Receivership Assets (ECF No 22). The Receivership Assets include, but are not limited to, assets of the following Defendants and Affiliated Entities: Broad Reach Capital, LP; Broad Reach Partners, LLC; and Bristol Advisors, LLC; BA Smith & Associates LLC; Bristol Advisors LP; CV Brokerage, Inc.; Clearview Distribution Services LLC; CV International Investments Limited; CV International Investments PLC; CV Investments LLC; CV Lending LLC; CV Minerals LLC; BD of Louisiana, LLC; TA 1, LLC; FFCC Ventures LLC; Prico Market LLC; GovAdv Funding LLC; Elm Street Investments LLC; Investment Consulting LLC; and Tempo Resources LLC (hereinafter “Receivership Parties”) Receivership Order, ¶ 1.

The Receiver’s powers and duties include, *inter alia*, “[t]o use reasonable efforts to determine the nature, location, and value of all property interests of the Receivership Parties, including, but not limited to, . . . claims [and] causes of

action . . . which the Receivership Parties own, possess, have a beneficial interest in, or control directly or indirectly[,]” and “[t]o take such action as necessary and appropriate for the preservation of Receivership Assets or to prevent the dissipation or concealment of Receivership Assets.” Receivership Order, ¶ 11 (A, G).

A. Proposed Lawsuits

The Receiver has identified several individuals and/or entities (collectively referred to as “the Proposed Defendants”) against whom potential claims and causes of action exist, and which should be brought in the near future. Consistent with his authority under Paragraph 9 of this Court’s June 29, 2020 Order Appointing Receiver, the Receiver may file suit prior to Court approval with respect to certain proposed Defendants to avoid potential statute of limitations defenses. The Receiver has attached as Exhibit 1 (filed under seal) the list of Proposed Defendants, which is not included in this public filing to avoid providing potential defendants advance notice of suit.¹ The majority of the claims to be asserted against the Proposed Defendants are in the nature of recovering fraudulent and voidable transfers of funds by Brenda Smith for which the Receivership

¹ This does not represent an exhaustive list of potential defendants and claims. However, it represents a list of individuals and/or entities the Receiver anticipates filing suit against in the near-term.

Parties received no discernible benefit or which were taken in bad faith and/or without the exchange of reasonably equivalent value.

The Proposed Defendants received, collectively, millions of dollars from Receivership Parties. The Receiver believes that prima facie claims exist on behalf of the Receivership against the Proposed Defendants and, subject to receipt of further documentation from or about them that may impact the claims or collectability, seeks permission to proceed with litigation against them now to minimize or negate the need to file suit before receiving Court Approval solely for purposes of preserving claims against statute of limitations and other timeliness defenses.²

B. Proposed Terms of Engagement of Counsel

The Receiver intends to utilize Clark Hill PLC³ to pursue the claims against the Proposed Defendants because counsel is already familiar with the facts and circumstances of this matter, having performed the investigation to identify the claims identified herein. Although the Appointing order approved retaining the

² The Receiver must caution all interested parties of the possibility that substantial portions of these payments may not be recoverable for a variety of reasons including that certain entities at issue may no longer possess sufficient assets to satisfy a judgment. Other claims may be subject to meritorious defenses and/or offsetting counter claims based on information not yet known to the Receiver. The Receiver may determine not to pursue litigation against all of the Proposed Defendants as he continues to evaluate the collectability of the claims at issue.

³ By February 1, the Receiver's current, undersigned counsel will have moved to Clark Hill PLC. (*See* ECF No. 219).

Receiver's counsel at an hourly rate, following consultation with and at the request of the SEC, the Receiver proposes to engage counsel to handle all claims against the Proposed Defendants on a contingent fee basis. The specific terms of the proposed fee arrangement are set forth in Exhibit 2, which has been filed under seal.⁴

Finally, the Receiver and his counsel are mindful of the fact that some of the Proposed Defendants may assert counterclaims against the Receivership Parties that may result in defense costs that are not captured by a contingent fee arrangement. To the extent that such counterclaims may result in significant added legal expense, the Receiver reserves the right to seek further orders from this Court to modify the proposed terms of counsel's engagement.

II. ARGUMENT

Subject to certain enumerated exceptions, the Receivership Order imposes a stay on "all civil legal proceedings of any nature . . . involving (a) the Receiver, in his capacity as Receiver; (b) any Receivership Assets, wherever located; [or] (c) any of the Receivership Parties, including subsidiaries and partnerships. . . .

Receivership Order, ¶ 38. The Order further provides that "[t]he Receiver shall not

⁴ The proposed contingency rates are identical to the rates previously proposed in connection with the Receiver's Second and Third Motions to Initiate Litigation on Behalf of the Receivership Estate (ECF Nos. 98, 147), which this Court approved (ECF Nos. 161, 167).

have the power to initiate suits in law or in equity without further Order of this Court, except and to the extent necessary to preserve any limitations period in which case the Receiver shall seek this Court's approval to proceed any further with any such suit." Receivership Order, ¶ 9.

Subject to the requirement that leave of Court is required in order to commence or resume litigation, the Receivership Order further provides that "the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may [be] in his discretion, and in consultation with SEC counsel, be advisable or proper to recover, conserve and/or maximize Receivership Assets." Receivership Order, ¶ 50. The Order continues:

Subject to the obligations to expend Receivership Assets in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Parties were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order.

Receivership Order, ¶ 51.

The Receiver and his Counsel believe, based upon their investigation to date, and after consultation with counsel for the Securities and Exchange Commission, that claims against the Proposed Defendants should be pursued for the benefit of, and on behalf of, the Receivership Estate against the Proposed Defendants.⁵ The Receiver and his Counsel believe that such claims are appropriate, reasonable, and worthy of pursuit, in order to recover, conserve and/or maximize Receivership Assets. It is the Receiver's opinion that pursuing these claims against these individuals and/or entities will be in the best interests of the investors, creditors and other stakeholders of the Receivership Parties. The Receiver has issued demand letters to, sought further information from, and is attempting to negotiate potential settlements with, several of the Proposed Defendants. Accordingly, the Receiver further requests authority, in the exercise of his business judgment, not to file suit against the Proposed Defendants in the event he determines it is in the best interests of the Receivership to compromise claims, pursue alternative dispute resolution options, or determines upon further information provided by Proposed Defendants that a cause of action should not be pursued.

In light of the foregoing, the Receiver hereby requests an Order from the Court: (1) lifting the stay on litigation set forth in Section VIII of the June 29, 2020

⁵ This is not an exhaustive list of the claims the Receiver is considering pursuing. Investigation is ongoing, and the Receiver may file subsequent motions to proceed with litigation against other individuals and/or entities.

Receivership Order, solely with regard to claims to be pursued against the Proposed Defendants; and (2) authorizing, but not requiring, the Receiver to pursue such claims. Counsel for the Securities and Exchange Commission has advised that they do not oppose this Motion.

III. CONCLUSION

In light of the foregoing, the Receiver respectfully requests that the Court grant the Receiver's Fourth Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate, and enter an Order in the form proposed.

Respectfully Submitted,

Date: 1/16/2023

s/ Robin S. Weiss

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**ORDER APPROVING THE RECEIVER, KEVIN DOOLEY KENT,
ESQUIRE'S FOURTH MOTION FOR PERMISSION TO INITIATE
LITIGATION ON BEHALF OF THE RECEIVERSHIP ESTATE**

THIS MATTER having come before this Court upon the Fourth Motion of Receiver, Kevin Dooley Kent, for Permission to Initiate Litigation on Behalf of the Receivership Estate;

It is on this _____ day of _____, 2023,

ORDERED that the Receiver's Fourth Motion for Permission to Initiate Litigation on Behalf of the Receivership Estate is APPROVED. The Receiver is authorized, but not required, to commence and prosecute any and all claims against the Proposed Defendants identified in Exhibit 1 to the Receiver's Fourth Motion for

Permission to Initiate Litigation on Behalf of the Receivership Estate, which was filed under seal; and it is

FURTHER ORDERED that the Receiver may engage Clark Hill PLC on the terms set forth in the Receiver's application for the purpose of initiating litigation against the Proposed Defendants on behalf of the Receivership Estate; and it is

FURTHER ORDERED that the stay on litigation shall remain intact with regard to all other claims stayed pursuant to the Receivership Order, with the applicable statute of limitations to remain tolled with regard to any cause of action accrued or accruing in favor of one or more of the Receivership Parties against a third person or party for which the injunction against commencement of legal proceedings remains in effect.

BY THE COURT:

HONORABLE MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

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**CERTIFICATE OF
SERVICE**

I hereby certify, this 16th day of January, 2023, that I caused to be served a true and correct copy of the Fourth Motion of Receiver, Kevin Dooley Kent, for Permission to Initiate Litigation on Behalf of the Receivership Estate, upon Plaintiff, Securities and Exchange Commission, through counsel of record by electronic filing pursuant to Fed.R.Civ.P. 5(b), and upon Defendant, Brenda A. Smith, on behalf of all defendants, via first-class mail, postage prepaid, as follows:

Brenda A. Smith
Register No. 72832-050
FCI Danbury
Federal Correctional Institution
Route 37
Danbury CT 06811
(to be mailed 1/17/2023)

s/ Robin S. Weiss

Robin S. Weiss, Esq.

Attorney for Receiver, Kevin Dooley Kent