

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

OCT - 1 2010

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
MBS Inspection Corporation, a)
Utah corporation; and Debra Ann)
Miller, an individual,)
)
Defendants.)

Case No. CJ-2010-5324

PLAINTIFF'S OBJECTION TO OBTAINING JUDGMENT
IN MOTION TO MODIFY STAY

Plaintiff, the Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator (Plaintiff), respectfully objects in part to the *Motion to Modify Stay* (Motion) filed on September 13, 2010, by Jay B. Watkins, counsel for Perkins Realty (Movant) for the following reasons:

1. On June 25, 2010, Plaintiff filed a *Petition for Permanent Injunction and Other Equitable Relief* (Petition) and an *Application for Temporary Restraining Order, Order Freezing Assets, and Order for Accounting*, pursuant to Section 1-603 of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2009). This Court issued a *Temporary Restraining Order, Order Freezing Assets and Order for Accounting* against Defendants (Temporary Order) on the same day.

2. On August 10, 2010, an *Agreed Order of Temporary Injunction* (Agreed Order) was entered by this Court.

3. Since March 2010, approximately \$200,000 in investor funds has been deposited with the Defendants. The Defendants' liquid assets that were frozen in compliance with the Temporary Order and Agreed Order totaled \$3,079.01.

4. Movant has \$28,241.32 of funds subject to the asset freeze in its trust account. These funds consist of rental payments for a house; earnest money for the purchase of the same house; and a rent deposit. All monies used by Defendants to make these payments came from investor monies.

ARGUMENT

The purpose of a court-ordered asset freeze is to preserve assets to ensure that if a judgment is granted, money will be available to satisfy that judgment. *S.E.C. v. Unifund SAL*, 910 F.2d 1028, 1041 (2d Cir. 1990). In *SEC v. Current Financial*, the defendants requested the release of funds subject to an asset freeze in order to obtain legal counsel. The Court did not authorize the release because the frozen assets were clearly less than the Defendants' estimated liability. *S.E.C. v. Current Fin. Services*, 62 F. Supp. 2d 66, 68 (D.D.C. 1999).

In the Motion, Movant claims that it is entitled to the past due rent. As in *SEC v. Current Financial*, Defendants' remaining funds that are the subject of this Court's asset freeze are dramatically less than the amount Defendants received from investors. The funds requested by Movant should not be released since the amount of any potential disgorgement that may be ordered by the Court for the benefit of investors vastly exceeds the amount of assets frozen by the Court. *Id.*

The payment to any creditor at this time would be a payment made out of investor funds. Further, to allow any payment to a creditor prior to a determination of other creditor claims

would create an unjust preference. The Temporary Order and Agreed Order were entered to help preserve the assets of the Defendants pending resolution of this matter.

CONCLUSION

In light of the facts presented and the authorities cited, Plaintiff respectfully requests that this Motion, as it relates to obtaining judgment for past due rent, be denied. Plaintiff has no objection to modifying the stay for Movant's Forcible Entry and Detainer action.

Respectfully submitted,



Jennifer Shaw, OBA #20839

Amanda Commesser, OBA #20044

Oklahoma Department of Securities

120 North Robinson, Suite 860

Oklahoma City, Oklahoma 73102

Telephone (405) 280-7700

Fax (405) 280-7742

Email: jshaw@securities.ok.gov

acornmesser@securities.ok.gov

Certificate of Mailing

I hereby certify that a true and correct copy of the Plaintiff's Objection to Obtaining Judgment in Motion to Modify Stay, was mailed this 1 day of October, 2010, by depositing it in the U.S. Mail, postage prepaid, to the following:

Robert L. Wyatt, IV, OBA #13154
WYATT LAW OFFICE
501 N. Walker Avenue, Suite 110
Post Office Box 1947
Oklahoma City, Oklahoma 73101
Attorney for Defendants

Jay B. Watkins, OBA #12525
P.O. Box 160, 921 Main
Duncan, Oklahoma 73534-0160
Attorney for Movant

A handwritten signature in black ink, appearing to read "James Shaw", is written over a horizontal line. The signature is cursive and somewhat stylized.