

FILED
THIRD DISTRICT COURT
2010 JAN 29 PM 3:04
SALT LAKE COUNTY
BY _____
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MANNING CURTIS BRADSHAW
& BEDNAR LLC

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IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

THE LIGHTED CANDLE SOCIETY, a
nonprofit Washington, D.C. corporation,

Plaintiff,

vs.

ASCENDUS CAPITAL MANAGEMENT,
LLC, a Utah limited liability company;
RICHARD T. SMITH, ROGER E. TAYLOR,
ROBERT ALSOP, FFCF INVESTORS, LLC, a
Utah limited liability company, LBS
PARTNERS, John Does I through IX and Jane
Does I through IX,

Defendants.

MOTION TO DISMISS

Case No. 090906303

Judge Kate Toomey

R. Wayne Klein, court-appointed receiver (the "Receiver") for Ascendus Capital Management, LLC and FFCF Investors, LLC (collectively the "Receivership Entities"), by and through his attorneys of record, hereby moves the Court to dismiss the Receivership Entities from this action. As set forth more fully in the accompanying Memorandum in Support of Motion to Dismiss, exclusive jurisdiction over the property of these two companies rests with

Judge Lindberg in an action where she appointed the Receiver to manage the affairs of these limited liability companies during their dissolution (the "Dissolution Action") pursuant to the Utah Revised Limited Liability Company Act, which provides in part that "[t]he court appointing a receiver or custodian has *exclusive jurisdiction* over the company and all of its property wherever located." Utah Code Ann. § 48-2c-1212(1) (emphasis added). Accordingly, Judge Lindberg's court is the only court with jurisdiction over the assets of the Receivership Entities, and plaintiff's action against the Receivership Entities should be dismissed. Further, any claims plaintiff may have against the Receivership Entities may be pursued pursuant to procedures which will be established by Judge Lindberg and the Receiver in the Dissolution Action.

DATED this 29th day of January, 2010.

**MANNING CURTIS BRADSHAW
& BEDNAR LLC**



L.R. Curtis, Jr.
David C. Castleberry
Attorneys for Wayne Klein, Receiver for FFCF
Investors, LLC, Ascendus Capital Management,
LCC, and Smith Holdings, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2010, I caused to be served in the manner indicated below a true and correct copy of the attached and foregoing **MOTION TO DISMISS** upon the following:

- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
- VIA EMAIL

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