

Thomas M. Melton (Utah State Bar No. 4999)

Meltont@sec.gov

Daniel Wadley (Utah State Bar No. 10358)

WadleyD@sec.gov

Cheryl M. Mori (Utah State Bar No. 8887)

MoriC@sec.gov

Attorneys for Plaintiff

Securities & Exchange Commission

15 West South Temple, Suite 1800

Salt Lake City, Utah 84101

Telephone: 801-524-5796

Facsimile: 801-524-5262

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

Art Intellect, Inc., a Utah corporation, d/b/a Mason Hill and
VirtualMG, Patrick Merrill Brody, Laura A. Roser,
Gregory D. Wood

DEFENDANTS.

Civil No. 2:11CV00357

Judge: Tena Campbell

**MEMORANDUM IN
OPPOSITION TO MOTION
TO REMOVE RECEIVER**

This Memorandum is filed in Opposition to the Motion to Remove Receiver (the “Receiver Motion”) (Docket # 109). The Receiver Motion posits that the court-appointed Receiver should be removed because he has not intervened in the case of SEC v. Merrill Scott, et al., Civil No. 2:02 CV 0039 C. This Motion has no support in the facts of this case, the facts in the Merrill Scott litigation, or in the legal authority supporting the replacement of equity receivers.

ARGUMENT

Roser uses the Receiver Motion to attempt to revive a number of discredited and unsuccessful arguments that her husband, Patrick Brody, forwarded in the Merrill Scott litigation. She repeats the contentions that Brody's assertions of his Fifth Amendment rights in the Merrill Scott litigation did not preclude his reversal of that position later in the litigation. Further, she argues that the court in Merrill Scott erroneously entered summary judgment because it failed to apply the proper evidentiary standards.¹

Roser asserts that the Receiver in this case should intervene in the Merrill Scott litigation because "of the presence of Patrick M. [Merrill] Brody as common defendants." Receiver Motion, p. 2. This analysis is deficient for two reasons. First, the Receiver Motion never makes clear why the Receiver for Art Intellect should intervene on behalf of Brody. Roser makes no argument that there is a nexus of fact between Art Intellect's operations and those of Merrill Scott. There is no evidence that funds from Art Intellect were used for anything other than the payment of Brody's legal fees to litigate the Merrill Scott case in the form of paying for Brody's counsel's Cadillac.

Second, the Receiver Motion fails to highlight the most important argument against intervention. Brody himself has abandoned the Merrill Scott litigation. Brody availed himself of the opportunity to litigate every conceivable issue in Merrill Scott, in some instances multiple times. After the Commission prevailed, Brody appealed the Court's decisions. He then

¹ In fact, much of Roser's argument in the Receiver Motion appears to have been lifted wholesale from Brody's pleadings in the Merrill Scott litigation.

voluntarily dismissed that appeal. If Brody felt strongly about the disposition of funds in the Merrill Scott litigation, he has the opportunity to litigate that position in its proper forum.²

Fundamentally, Roser misapprehends the nature of receivership proceedings. The district court---not the receiver---has jurisdiction over the receivership entities and the district court itself administers the receivership entities. See Porter v. Sabin, 149 U.S. 479 (1893); Atlantic Trust Co. v. Chapman, 208 U.S. 360, 371 (1908). The receiver is a neutral officer of the court, while “the court itself holds and administers the estate.” Id. “A receiver appointed by the court is an arm or hand of the court.” 1 Clark on Receivers, § 11(a) (3d ed. 1959). As one court has stated:

A district judge supervising an equity receivership faces a myriad of complicated problems in dealing with the various parties and issues involved in administering the receivership. Reasonable administrative proceedings, crafted to deal with the complex circumstances of each case, will be upheld. A district judge simply cannot effectively and successfully supervise a receivership and protect the interests of its beneficiaries absent broad discretionary power.

SEC v. Hardy, 893 F.2d 1034, 1038 (9th Cir. 1986).

In any event, Roser’s alternatives, returning Art Intellect to herself, a named defendant in this action or appointing a new receiver are unappealing. Appointing Roser would be tantamount to returning control of Art Intellect to the very person who supervised the violations of the federal securities laws alleged in the Commission’s Complaint. In particular, Roser’s unwillingness to answer questions regarding her prior management of Art Intellect and the disposition of investor funds does not indicate she would protect investor interests in the future.

The appointment of a new Receiver of Roser’s choosing is also problematic. Roser provides no estimate or proposal for her candidate. She also does not give the Court any qualifications for this new receiver candidate. As the Court is aware, federal equity receiverships

² Roser misleads the Court about the alleged transfer of \$4 million to the United States Treasury. The Receiver in Merrill Scott has proposed, and the Court has approved, a distribution of most of those funds to investors defrauded by Brody in that case (Docket # 1474).

are complicated and require specific expertise. The current receiver was nominated, in part, because of his experience with securities laws and federal equity receiverships. Finally, given Roser's professed concern for costs, the appointment of a new receiver will require the new candidate to re-acquire all of the institutional knowledge already in the possession of the current receiver.

CONCLUSION

Based on the foregoing, the Court should deny Roser's Motion to Remove Receiver.

Dated this 31st day of August 2011.

/s/

Thomas M. Melton
Daniel Wadley
Cheryl M. Mori
Attorneys for Plaintiff
Securities and Exchange Commission