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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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.

Case No. 2:11CV00357 TC

Judge Tena Campbell

SPECIAL INTERIM STATUS
REPORT OF R. WAYNE KLEIN,
RECEIVER AND THE
SECURITIES AND EXCHANGE
COMMISSION

This Special Interim Status Report is being submitted by R. Wayne Klein, the Court-Appointed Receiver¹ (the “Receiver”), Clyde Snow, counsel for the Receiver, and the Securities and Exchange Commission (“SEC”).

PURPOSES OF THIS SPECIAL REPORT

At a hearing on October 12, 2011, counsel for the Receiver notified the Court that the Receiver was near a decision point on long-term plans for operations of the Receivership. Subsequent to that hearing, the Receiver and SEC met to evaluate options for moving forward. In light of the Court’s October 20, 2011 Preliminary Injunction Order [Doc. #134] that the products that the defendants were selling were securities, the Receiver can now move to complete the winding up process of the receivership entities.² This Special Report summarizes the Receiver’s plans for moving forward.

Purposes of the Receivership

While the primary goal of a Receivership, such as this, generally is recovering assets for distribution to defrauded investors, that is not the sole objective. As the Court’s Order Appointing Receiver [Doc. #5] indicates, the Receiver also was charged to:

1. Assume control of the businesses of the corporate defendants and operate them in the place of the officers, managers, and employees that were dismissed by the Court (¶¶6, 8(e), 21, 22);
2. Pursue and preserve all claims of the corporate entities (¶6);

¹ The Receivership includes Art Intellect, Inc. (“Art Intellect”), d/b/a Mason Hill (“Mason Hill”) and VirtualMG (“VirtualMG”), and the assets of Patrick Merrill Brody (“Brody”), and Laura A. Roser (“Roser”), collectively, the “Receivership Entities.”

² As discussed below, the Receiver’s ability to wind up the Receivership may be affected by the Defendants’ expressed intentions to seek interlocutory appeal of the Court’s Preliminary Injunction Order.

3. Determine the nature, location and value of all property interests of the receivership defendants, including properties, monies, and rents. This includes preservation of receivership property and prevention of the dissipation or concealment of receivership property (§§8(a), (b), (g), 10, 20);

4. Manage and control the receivership estate, consisting of monies, properties, and claims of the receivership defendants (§8(c));

5. Make payments and disbursements and incur expenses as necessary for operation of the receivership estate (§§8(d), 36, 38, 41);

6. Perform a forensic accounting of the operations of the receivership entities (§§8(b), 11, 18, 44; *see* §8(f));

7. Take possession of and protect the records of the receivership entities (§§9, 16, 17, 19);

8. Bring legal actions he deems necessary or appropriate to discharge his duties (§§8(i), 43);

9. Sell properties and other assets of the receivership defendants (§39);

10. Close the offices of the receivership defendants that are not needed for the operation of the receivership (§§39, 41);

11. Develop a plan for the recovery and liquidation of receivership property (§53);

12. Report to the Court (and investors) information the Receiver has learned in carrying out his duties (§§54-56); and

13. Assist the SEC and other government agencies that are investigating the activities of the receivership defendants (§57).

This list of duties demonstrates that the Receiver is to accomplish a variety of important tasks, even if the Receivership Estate never recovers sufficient assets to make distributions to investors. Certain of these key tasks accomplished to date in this case had to be done by someone. These included: i) closing the Utah and Florida offices of Mason Hill to halt the dissipation of Receivership assets, cease incurring additional costs, and prevent further violations of the securities laws, ii) canceling real estate transactions that were in the process of closing – to avoid incurring additional losses and liabilities and to prevent further injury to counterparties in those transactions, and iii) selling real estate properties that were owned by receivership defendants (including dealing with debts on those properties).

Other key receivership tasks were: i) determining whether the defendants have hidden (and still possess) funds taken from investors, ii) identifying where the misappropriated investor funds were spent, and iii) assisting civil and criminal law enforcement agencies that are investigating defendants or need records of the Receivership defendants.

Current Status

Now that the Receiver has completed his forensic accounting of the financial transactions by the defendants, the Receiver can make decisions on moving forward. Specifically, the information learned from the forensic accounting enables him to know what assets exist and what recoveries are viable.

The current bank account balance (November 11, 2011) is \$68,394.39. This includes \$5,000.00 received on November 4, 2011 from the Receiver's transfer of the final Mason Hill-owned property in Florida to the Seybolds (the secured lenders).

Plans to Wind Up Receivership Activities

With the forensic accounting completed – and in light of the relatively limited funds recovered to date – the Receiver can formulate a plan for moving forward. Based on what he has learned, the Receiver expects to pursue the following liquidation plan:

1. The claims that might be asserted by the Receiver have been evaluated. These include claims against employees, officers, and professionals who assisted in structuring and operating Mason Hill’s fraudulent enterprise and claims against businesses who received payments from Mason Hill for personal expenses of Roser and Brody. These claims are being evaluated in terms of the culpability of the recipient and the likely collectability of the funds. In performing this analysis, the Receiver has identified several additional claims that might be recovered efficiently.³ If successful, this would bring the total recovery to as much as \$120,000.00 to \$140,000.00, less the expenses of seeking recovery of these funds.⁴
2. This amount is significantly less than the expenses incurred by the Receiver and his counsel since the inception of this case. This leaves no money available for distribution to investors.⁵
3. As a result, the Receiver and the SEC have jointly come to the conclusions that:

³ The Receiver also plans to seek recovery of three cars owned by Art Intellect and Roser as well as furniture in Roser’s home. At this point, Roser has still not complied with the Court’s order to turn over all assets to the Receiver, so it is unknown whether these assets will be delivered to the Receiver. The Receiver also has ten computers and monitors from the Mason Hill offices that he was holding pending the Court’s decision on whether the investments being sold by Mason Hill constituted securities. This equipment can now be sold, but is expected to net less than two thousand dollars.

⁴ If these claims are contested, the costs of pursuing these claims may significantly reduce the net amount recovered.

⁵ Even if some monies were available to make a distribution to victims, creation of a distribution plan and litigating expected challenges to the plan would be expected to consume another \$10,000.00 to \$20,000.00 in recovered funds.

a. Continued searches for assets and investigation of potential claims are not likely to result in discovery of sufficient assets to make a distribution to victims of this fraud;

b. Pursuing many of the claims that the Receiver might assert are not justified in terms of the collectability of judgments, the costs of litigating the claims, or the fairness in pursuing some of those claims;

c. The assets already recovered and those likely to be recovered are insufficient to pay the expenses of operation of the Receivership, meaning the Receiver and his counsel will only be paid for a portion of the work they have already performed – and will continue to perform in finalizing the winding up on this Receivership; and

d. The few claims that the Receiver plans to pursue appear justified in light of the expected recoveries and costs of achieving those recoveries. Those recoveries, if achieved, will still not be sufficient to compensate the Receiver and his counsel for the work already performed.

4. By the end of the year, the Receiver and the SEC expect to have a better idea of the existence of any other claims and the expected resolution of claims being litigated. At that time, they hope to petition the Court for a discharge of the Receiver. Of course, if other assets are located or significant causes of action are identified that might make it possible to make a distribution to investors, the Receiver will notify the Court and describe the new plan of operation.

Potential Obstacles to Closure of Receivership

As noted earlier, the Court's ruling that the investment interests sold by Mason Hill and the other Defendants constitute securities eliminated a major impediment to closure of the

Receivership. However, Defendants Roser and Brody have indicated they may seek interlocutory appeal of the Court's Preliminary Injunction Order. If they seek and are granted permission to take interlocutory appeal of this Order, several factors will constrain the Receiver's ability to close the Receivership:

- The Receiver will feel obligated to retain all records of Art Intellect and VirtualMG, if an interlocutory appeal suggests that the issue of the application of the securities laws is in doubt;
- The Receiver will feel constrained in being as aggressive in requiring Defendants to turn over their personal assets, as required by the order appointing a receiver;
- Computers and related equipment that the Receiver has been holding, awaiting a determination that the interests sold were securities, will have to be retained until the interlocutory appeal has been decided; and
- The Receiver expects that the few recovery actions he intends to pursue will be defended more aggressively (or delay sought) by the recipients of fraudulent transfers on the basis that the underlying basis for the Receiver's recovery action is now in doubt.

These effects will not only prevent an early closure of the Receivership, but will also result in additional costs for the Receiver and his counsel – costs which will not be reimbursed in light of the dearth of assets that have been recovered to date. The Receiver will, of course, continue to carry out his mandate from the Court. However, in the event of an interlocutory appeal, the Receiver expects that he should cease taking steps to close the Receivership.

Request for Interim Fee Award

In light of the work already performed by the Receiver and his counsel, and the Court's statement (at the October 2 hearing) that the amount of work performed and fees charged appear justified, the Receiver asks the Court for an interim award of costs and fees in the amount of \$50,000.00. This will provide partial compensation for the work performed over the prior seven months – for which no compensation has been received.

CONCLUSION

In this case, the tasks assigned by the Court have been largely accomplished. The Receiver has managed to:

- Recover property that had been transferred improperly to Roser;
- Prevent (in conjunction with the SEC) Roser's and Brody's sale of home furnishings in violation of the Court's injunction;
- Close two offices of Mason Hill;
- Sell five real estate properties and other assets owned by Mason Hill;
- Protection of the business records of the company; and
- Complete an analysis showing the sources and uses of all funds taken from investors.

These tasks needed to be done, even if insufficient funds were recovered to make distributions to investors. Creation of a Receivership was the best means of accomplishing these tasks. If the Receiver had not performed these tasks, many of the tasks would have not been accomplished and the asset sales and office closings would have been left to litigation or

bankruptcy court proceedings. These alternative courses would have imposed greater burdens on other courts than have been required in the current case.

If interim fees are not granted to the Receiver and his counsel for their work, especially in light of them already facing the risk of being paid for only a portion of their work, Receivers likely will be less willing to assist the Courts and regulatory agencies in halting and remediating fraudulent operations.

A proposed order granting an interim cost and fee award of \$50,000.00 is attached.

The Receiver verifies under penalty of perjury that the foregoing is true and correct.

DATED this 15th day of November, 2011.



WAYNE KLEIN, Receiver

DATED this 15th day of November, 2011.

CLYDE SNOW & SESSIONS

/s/ Jennifer A. James

JENNIFER A. JAMES, Counsel for Receiver

DATED this 15th day of November, 2011.

SECURITIES & EXCHANGE COMMISSION

/s/ Thomas M. Melton

THOMAS M. MELTON, Counsel for Plaintiff

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above was served via email on this 15th day of November, 2011 on the following:

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Court-Appointed Receiver

/s/Jennifer A. James