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*Attorneys for Plaintiff R. WAYNE KLEIN, the
Court-Appointed Receiver*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

U.S. VENTURES LC, a Utah limited liability
company, WINSOME INVESTMENT
TRUST, an unincorporated Texas entity,
ROBERT J. ANDRES and ROBERT L.
HOLLOWAY,

Defendants.

**MOTION FOR ORDER REQUIRING
TRANSFER OF CONCEALED
PROPERTY**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver¹ (the “Receiver”), by and through his
counsel of record, hereby submits this Motion for Order Requiring Transfer of Concealed

¹ The Receiver has been appointed over U.S. Ventures LC (“USV”), Winsome Investment Trust (“Winsome”), and all the assets of Robert J. Andres (“Andres”) and Robert L. Holloway (“Holloway”).

Property.

BACKGROUND

On December 15, 2016, the Receiver filed his Motion for Permission to Finalize Settlement Agreement with Forres McGraw and Memorandum in Support (Dkt. 449). In that Motion, the Receiver sought judicial approval of a settlement agreement in which McGraw “paid \$9,000.00 to the Receivership Estate and will transfer the Receiver title on lake property McGraw owns in Navarro County, Texas. McGraw represents that the property is worth \$15,000. The Agreement is conditioned on the property being transferred to the Receiver free and clear of all liens and encumbrances.” *Id.* at 2. In negotiating that proposed agreement, McGraw submitted to the Receiver a Hardship Affidavit in which he represented that the referenced lake property, described in the Hardship Affidavit as “Lot at Richland Chambers Lake” to have a present market value of \$15,000. *See* Declaration of R. Wayne Klein (“Klein Decl.”), attached as Ex. A, at ¶ 4. The Hardship Affidavit also required McGraw to list all other assets of significant value. Nowhere on the Hardship Affidavit did McGraw mention a boat slip or boat slip rights associated with the lake property. *See id.* McGraw signed and had notarized the hardship Affidavit “under penalty of perjury that all of the above statements and answers are true and this is a complete statement of all of my income and assets, real and personal, whether held in my name or by another.” *Id.*

In reliance on the Hardship Affidavit, the Receiver requested that the Court approve the Settlement Agreement. *See* Dkt. 449. The Court, in turn, relied on the Receiver’s representations in granting permission to finalize the settlement agreement. *See* Dkt. 451.

After the agreement was finalized and McGraw transferred the lake property to the Receiver, the Receiver discovered that the lake property includes a boat slip which will increase the property's value by \$5,000-\$10,000. *See* Klein Decl. ¶ 7. Despite his representation that the Hardship Affidavit identified all of his assets, McGraw never mentioned the boat slip, nor did he transfer its rights to the Receiver when he transferred the lake property. *Id.* ¶¶4-6. Had the Receiver been aware of the boat slip, he would have demanded that it be included in the transfer of the lake property. *Id.* ¶ 8. The Receiver has made numerous demands to McGraw that he transfer the boat slip to the Receivership pursuant to his representations in the hardship affidavit and the settlement agreement, but he has not responded. *Id.* ¶ 9.

ANALYSIS

The Receiver requests that the Court order McGraw to transfer to the Receivership Estate all rights associated with the lake property, including the boat slip and all related rights. "It is generally recognized 'that the district court has broad powers and wide discretion to determine ... relief in an equity receivership.'" *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010) (citation omitted). "This discretion derives from the inherent powers of an equity court to fashion relief." *Id.*

Here, McGraw obtained dismissal of the Receiver's claims against him that sought to recover \$123,598.54 in fraudulent transfers he received, based on McGraw's representations that he had insufficient assets to repay that amount. *See* Dkt. 449 at 2. This included his representation that he owned the lake property worth \$15,000 with no mention of, or value added based on, the associated boat slip. *Id.*

Had McGraw not misrepresented and concealed his assets, the Receiver would have insisted that any settlement include the transfer of the boat slip and all other rights associated with the lake property. Accordingly, McGraw obtained the dismissal of the claims against him by fraud and misrepresentation on the Receiver, who is an officer of the Court. He also obtained the Court's approval of the Settlement Agreement by fraud, as that approval was based on the Receiver's Motion which, unbeknownst to the Receiver, incorporated McGraw's misrepresentations.

Based on these misrepresentations to the Receiver and the Court, equity demands that the Court exercise its broad authority to fashion relief by ordering McGraw to transfer to the Receiver all rights and property associated with the lake property, including the boat slip. This relief is proper and equitable, as it protects the Receivership Assets and enforces the parties' intent in executing the Settlement Agreement. Specifically, McGraw represented that he has insufficient assets to repay to the Receivership Estate the \$123,598.54 in fraudulent transfers that he received, and that he would instead transfer all available assets to the Receiver in exchange for dismissal of the much larger claim against him. This relief is also proper and equitable because the Receiver expects the boat slip alone has little to no value without the associated property, thus representing no loss or prejudice to McGraw if he is required to transfer it. In contrast, the boat slip will add \$5,000 to \$10,000 to the value of the lake property, representing a significant benefit to the Receivership Estate and its claimants.

CONCLUSION

For the forgoing reasons, the Receiver requests that the Court order McGraw to transfer all rights associated with the lake property, including the boat slip and all related rights, to the Receiver.

DATED this 9th day of November, 2017.

MANNING CURTIS BRADSHAW
& BEDNAR PLLC

/s/ Christopher M. Glauser

*Attorneys for R. Wayne Klein, Court-Appointed
Receiver*

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **MOTION FOR ORDER REQUIRING TRANSFER OF CONCEALED PROPERTY** to be served in the method indicated below to the Defendant in this action this 9th day of November, 2017.

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

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/s/ Christopher M. Glauser _____