

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 16-CV-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, et al.,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC., et al.,

Relief Defendants.

**PLAINTIFF'S UNOPPOSED MOTION TO MODIFY ASSET FREEZE TO ALLOW
DEFENDANT ARIEL QUIROS TO TURN OVER ASSETS TO THE RECEIVER**

I. Introduction

Plaintiff Securities and Exchange Commission moves the Court to modify the asset freeze on Defendant Ariel Quiros (DE 11, 238) to allow Quiros and the Court-appointed Receiver to take actions that will bring cash and several million dollars of real property into the Receivership estate for the benefit of investors and creditors. As described in more detail below, Quiros will receive credit for the equity in the property towards satisfaction of or offset against any final disgorgement judgment the Court imposes on him. The modification will also provide for the release of additional frozen funds to Quiros' current attorneys for defense fees and costs. Both Quiros and the Receiver agree to the relief sought in this motion.

II. Relevant Factual Background

The Commission filed this action in April 2016, alleging, among other things, that Quiros and numerous corporate defendants violated the anti-fraud provisions of the federal securities

laws. As part of emergency relief the Commission requested, the Court imposed a freeze on all assets in which Quiros held a direct or indirect interest (DE 11, 238).

Throughout the course of the investigation and continuing during the litigation of this matter, the Commission and the Receiver have identified numerous pieces of real property subject to the freeze that Quiros owned – by himself, with his wife, or through corporations he controlled. The Commission alleges he purchased many of these properties using investor funds. Recently, in the course of answering Commission interrogatories about his assets, Quiros identified additional real property he either owns or in which he has an interest that the Commission and the Receiver did not know about. Three of the properties Quiros owns or controls (which the Commission and the Receiver knew about) are the subject of this motion:

- Several parcels comprising an entire block in downtown Newport, Vermont, which Quiros and other Defendants in the case intended to redevelop as part of a proposed EB-5 offering that was not yet underway when the Commission brought this action. The property is now a fenced-in, undeveloped construction site commonly known as “the hole in the ground.” The property is owned by GSI of Dade County, Inc., a Florida corporation Quiros controls that is one of the relief defendants in this case.
- Land outside of Newport known as the Bogner property on which development of the biomedical research center that was the subject of the Phase VII offering was to occur. GSI also owns the Bogner property, which consists of 25 acres.¹
- The Setai Condominium in New York City, which was the subject of earlier proceedings in this case. The Commission’s Amended Complaint alleged Quiros bought the Setai with investor funds. DE 120 at ¶105. The Court allowed Quiros to mortgage the Setai in 2016 and place the mortgaged funds with the Receiver to use in paying his living expenses and attorneys’ fees (DE 148). The note on the mortgage is due on August 1, 2017. If Quiros does not make the payment, the lender may attempt to take control of the condominium and potentially several million dollars in equity in the unit that could inure to the Receivership estate will be lost.

Also in his interrogatory answers, Quiros identified two bank accounts the Receiver and

¹ GSI bought the 25-acre Bogner property in July 2011, and sold a portion of it to the Phase VII limited partnership in December 2012. However, the sale was never recorded in the local property records. Therefore, under Vermont law, GSI still owns the entire tract and Quiros will turn over the entire tract to the Receiver.

the Commission did not know about that additionally are the subject of this motion. The first is an account in a Columbian bank that Quiros indicated contains approximately \$150,000. Quiros represented he has not withdrawn or spent any money from that account since the inception of this case and has provided supporting documentation of this. The second account was held at a U.S. branch of the same bank. Quiros represented that after the freeze was imposed, the bank closed the account and issued him a cashier's check for \$104,000. Quiros stated in his interrogatory answers and through his counsel he does not know what happened to the check, but is taking steps to have a new check reissued.

Finally, Quiros disclosed in his interrogatory answers that he and his wife sold an RV they jointly owned in 2014, and the buyer has been paying them \$1,000 to \$2,000 a month since then. The \$2,000 monthly payments continued after the freeze went into effect. Quiros' attorneys stated he deposited those payments into a checking account in his wife's name on which he later was added as a signatory. Quiros then withdrew the money each month and paid condominium fees and expenses on two condominiums in which he has a partial interest – one in Columbia and one in Puerto Rico.² In total, it appears Quiros spent \$28,000 since April 2016, \$14,000 of which was his and subject to the freeze, and \$14,000 Quiros stated was his wife's money and for purposes of this motion the Commission agrees was not subject to the freeze.

Quiros' attorneys have represented in writing that Quiros will no longer spend the future payments. Furthermore, as described below, the current motion and proposed order provide a method for Quiros to repay the \$14,000.

III. Proposed Asset Freeze Modification

The Commission, with the agreement of Quiros and the Receiver, proposes the following

² Quiros has agreed to provide documentation of how he spent the money.

modifications of the asset freeze to allow Quiros to convey property and cash to the Receiver for the ultimate benefit of investors.

First, the Commission asks the Court to modify the freeze to allow Quiros to execute quitclaim deeds on the Newport, Bogner, and Setai properties so they are immediately turned over to the Receiver. The Receiver will subsequently pay any property taxes or other liens or encumbrances on the properties (including the Setai mortgage) and undertake efforts to sell all three as quickly as possible. The Receiver will place the sale proceeds in trust pending further order of the Court. However, the parties agree Quiros will receive credit for the profits the Receiver realizes from the sales (sale price minus sale costs and any encumbrances the Receiver has to pay) either towards partial satisfaction of or an offset against a final disgorgement judgment the Court orders against Quiros.

The Receiver believes there is equity in all three properties, and their immediate turnover will allow the estate to prevent property taxes and other debts from causing them to lose significant value (particularly in the case of the Setai, where the entire property could be lost within weeks). Quiros' agreement to turn them over will allow the Receiver to maximize the value of the property through Quiros' disgorgement and ultimately potentially benefit investors and creditors.

Second, the Commission asks the Court to modify the asset freeze to allow Quiros to (1) repatriate the approximately \$150,000³ in the Columbian bank account and remit it to the Receiver; and (2) remit the \$104,000 from the closed U.S. bank account to the Receiver once Quiros obtains a replacement cashier's check. The Receiver will place both of these amounts in trust pending further order of the Court. If funds from either source remain at the time the Court enters a disgorgement judgment against Quiros, he also will receive credit as partial satisfaction

³ The amount fluctuates due to changing exchange rates.

of or an offset against that judgment

Third, the Commission asks the Court to modify the asset freeze to allow Quiros to turn over a final \$14,000 balloon payment due this month on the RV sale to the Receiver as repayment of the money he spent after the asset freeze went into effect.

Fourth, upon execution of the quitclaim deeds, the Commission asks the Court to modify the asset freeze to allow payment of an additional \$175,000 to Quiros' current attorneys for defense fees and costs. This money would come from the proceeds of the IRS tax refund check described in Quiros' previous agreed motion to release funds (DE 319), which the Receiver now holds in trust pending further Order of the Court. The parties agree as in that motion and the subsequent Court order approving it (DE 320) that if Ironshore Indemnity Company releases funds to Quiros up to \$275,000 for defense fees and costs, that money will be used to reimburse the tax refund check funds now held in trust.

A proposed order granting these requests is attached. All of the actions the parties request are without prejudice to any of their rights to make further motions or objections to modification of the asset freeze, including the payment of any additional attorneys' fees and costs to Quiros.

IV. Conferral

Pursuant to Local Rule 7.1(a)(3), the Commission conferred with attorneys for Quiros and the Receiver, who agree to this motion. The Commission did not consult with attorneys for Defendant William Stenger, as the relief requested does not affect him.

Respectfully submitted,

June 13, 2017

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 13, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Robert K. Levenson
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SERVICE LIST

SEC v. Ariel Quiros, et al.
Case No. 16-CV-21301-GAYLES

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**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION
TO MODIFY ASSET FREEZE TO ALLOW DEFENDANT ARIEL QUIROS
TO TURN OVER ASSETS TO THE RECEIVER**

THIS MATTER comes before the Court upon the Plaintiff's Unopposed Motion To Modify The Asset Freeze (DE ____). The Court has carefully reviewed the motion and is familiar with the extensive record in the case. Noting that Defendant Ariel Quiros and the Court-appointed Receiver agree to the relief sought in the motion, the Commission's Motion is **GRANTED**. The Court more specifically orders the asset freeze imposed in this case (DE 11, 238) modified as follows:

Quiros shall within seven days of entry of this Order execute quitclaim deeds or any other documents necessary to effect the turnover of the three properties described in the Motion as the Newport property, the Bogner property, and the Setai Condominium to the ownership, possession, and control of the Receiver. The Receiver is authorized to pay any property taxes or other liens or encumbrances on the properties and undertake his best efforts to market and sell

the three properties, provided however that the Court must approve the sale or other disposition of the properties upon motion of the Receiver and an opportunity for other parties to the case to agree or object. Proceeds from the ultimate sale or other disposition of the properties shall be placed in the Receiver's trust account pending further order of the Court; however, any funds from the sale or disposition of the properties representing equity (sale price minus sale costs and any encumbrances the Receiver pays) shall be considered disgorgement by Quiros and he shall receive credit in the form of partial satisfaction of or offset against any final disgorgement judgment the Court enters against Quiros.

Furthermore, Quiros shall repatriate funds and is authorized to take necessary action to repatriate funds held in Davivienda International Bank Account ending in 4625 in Columbia to the United States. He is then directed to remit those funds to the Receiver, who will place them in trust pending further order of the Court

Quiros is also ordered to take all necessary action to have Davivienda Bank reissue a cashier's check in the amount of \$104,000, representing funds in a closed Quiros account formerly held in the United States. Quiros is then directed to remit those funds to the Receiver, who will hold them pending further order of the Court. The funds from both accounts shall be considered disgorgement by Quiros and, to the extent they are not used for other purposes prior to the imposition of a final disgorgement judgment against Quiros, shall be applied as partial satisfaction of or an offset against a final disgorgement judgment.

Quiros is also ordered to sign over to the Receiver the \$14,000 payment he expects to receive in June 2017 on the RV sale to the Receiver as repayment for funds spent by Quiros from SunTrust Bank Account ending in 6121 between May 2016 and May 2017 in violation of the asset freeze.

Finally, upon execution of the quitclaim deeds by Quiros, the asset freeze is modified to allow the Receiver to release \$175,000 of the IRS Tax Refund Check previously described in DE 319 and DE 320 to Damian & Valori LLP for defense fees and costs, provided that if Ironshore Indemnity Company releases any amounts up to and including \$275,000 (the amount represented in this order and in DE 320) to Damian & Valori, the firm shall send that money to the Receiver to replenish the IRS Tax Refund check amount.

This Order is without prejudice to the rights of any party to request further modification of the asset freeze or to object to any further modification of the asset freeze, including the release of any additional amounts of frozen funds for Quiros' defense fees and costs.

DONE AND ORDERED this ____ day of June 2017 in Chambers in Miami, Florida.

THE HON. DARRIN GAYLES
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel and Parties of Record