UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, *et al.*,

Defendants.
_____/

DEFENDANT PEOPLE'S UNITED FINANCIAL, INC. AND PEOPLE'S UNITED BANK, N.A.'S OBJECTION TO THE PROPOSED BAR ORDER IN FAVOR OF ARIEL QUIROS AND REQUEST TO BE HEARD AT THE DECEMBER 19, 2018 HEARING

Defendants People's United Financial, Inc. and People's United Bank, N.A. (collectively, "PUB") respectfully submit their objection to the Receiver's Motion For Entry Of A Bar Order In Favor of Ariel Quiros ("Quiros"), and in support thereof, state as follows:

PRELIMINARY STATEMENT

In this action, the Securities and Exchange Commission has accused Quiros of being "the architect of an enormous, eight-year-long fraudulent scheme in which he stole more than $55 million," and "orchestrated the misuse of approximately $200 million." (Dkt. No. 1 ¶ 3.) The proposed bar order -- which seeks to insulate Quiros from claims by PUB and others -- does not benefit the Receivership Entities in any manner, and the Receiver's settlement with Quiros is not contingent upon the bar order being entered. Rather, the *sole* purpose of the bar order is to benefit Quiros at the expense of others, such as PUB, who have been caught up in the litigation arising from Quiros's misdeeds. There simply is no legal or other basis to reward a wrongdoer

such as Quiros in this manner, and the motion for entry of a bar order should be denied.

FACTS

In April 2016, the SEC commenced this action, accusing Quiros of masterminding a massive fraud, pursuant to which he "pilfered" tens of millions of dollars for his personal use. (See Dkt. No. 1.) In November 2016, in preliminarily enjoining Quiros, the Court found that "the record supports a finding that Quiros committed many deceptive and manipulative acts … in furtherance of a scheme to defraud," that "Quiros acted with scienter" in doing so, and that "Quiros's actions are egregious." (Dkt. No. 238, at 26, 33.) In February 2018, this Court entered a Final Judgment against Quiros, requiring him to disgorge more than $81 million, as well as to pay interest and penalties of more than $2.5 million. (Dkt. No. 450.) In order to satisfy that judgment, Quiros "relinquishe[d] all legal and equitable right, title and interest in the [enumerated] property and assets," which included his interests in the Jay Peak Resort and Burke Mountain Resort. (*Id.*)

The Receiver, which filed his own lawsuit against Quiros (*Michael I Goldberg, as Receiver, v. Raymond James Financial, Inc., et al.*, 1:16-cv-21831-JAL (S.D. Fla. – Miami Div.)), has now entered into a Settlement Agreement and Release with Quiros (the "Settlement Agreement"), subject to approval of this Court. (Dkt. 501.) Pursuant to the Settlement Agreement, Quiros is not paying any additional compensation to the Receivership Entities.[1]

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[1] While the Receiver's motion (Dkt. 501, at 2 and Exh. 1) refers to the assets that Quiros previously disgorged pursuant to the Final Judgment entered in this Court in February 2018 (Dkt. 450), those assets are not being disgorged by Quiros pursuant to the Settlement Agreement with the Receiver that is the subject of this motion for Court approval. Rather, those assets were disgorged by Quiros months ago, after a Final Judgment was entered against him, at which time Quiros "relinquish[ed] all legal and equitable right, title and interest in the property and assets"

Instead, the only "consideration" that Quiros is providing is mostly what he has already provided: (a) a waiver of any rights to property of the Receivership Entities; (b) a waiver of any right to proceeds from the sale of the assets of the Receivership Entities; and (c) an agreement that Quiros has no standing concerning the administration of the Receivership Entities -- unless such matters directly "implicate Mr. Quiros's personal or property rights or interests." (Dkt. 501, p. 23-25, ¶¶ 3(a) – (c).)[2] Given that Quiros previously waived any rights to the assets of the Receivership Entities, the first two items of "consideration" do not provide any value. Similarly, the third item of "consideration," providing that Quiros only has standing in this proceeding to address issues in which he has an interest, does not providing any value to the Receiver, but rather simply stating the law.

In return for this "consideration," the settlement provides that Quiros will receive:

(a) the assignment of a $325,000 face value note;

(b) the right to pursue other assets held in the name of "GSI;"

(c) the dismissal of the action *Michael I Goldberg, as Receiver, v. Raymond James Financial, Inc., et al.*, 1:16-cv-21831-JAL (S.D. Fla.);

(d) a release from the Receivership Entities; and

(e) a limited release of Quiros's family members.

(Dkt. Settlement Agreement, ¶¶ 3(d) – (e); 5(a)-(b).)

Moreover, the Settlement Agreement also provides that "[t]he Receiver covenants that he shall use his best efforts to seek the entry of a Bar Order." (Settlement Agreement ¶ 5(d).) The

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(Dkt. No. 450), and "waive[d] any right he may have to appeal from the entry of the Final Judgment." (Dkt. No. 447.1, ¶ 9.)

[2] The Settlement Agreement also provides for Quiros to release the Receiver, although there is no indication that Quiros had any valid claims against the Receiver to release. (*Id.* ¶ 5(c)).

proposed bar order is extremely broad, barring "[a]ny non-governmental person or entity" from:

> instituting, reinstituting, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;"

(Dkt. 501, p. 41.)

The "Barred Claims" themselves are defined to be exceedingly broad:

> [A]ny and all claims, actions, lawsuits, causes of action, investigation, demand, complaint, cross-claims, counterclaims, or third-party claims or proceeding of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States, whether arising under local, state, federal or foreign law; that in any way relate to, are based upon, arise form, or are connected with the released claims or interests of any kind as set forth in the Settlement Agreement, with the Receivership Entities, the investments made in the eight limited partnerships which raised funds form investors, including but not limited to those events, transactions and circumstances alleged in [this action].

(*Id.*)

Thus, not only is Quiros providing nothing meaningful to the Receivership Entities pursuant to the Settlement Agreement, he is receiving significant value, in the form of assets, releases and the proposed bar order subject of this motion.

ARGUMENT

I. QUIROS IS NOT PAYING ANY ADDITIONAL CONSIDERATION FOR THE BAR ORDER[3]

The Court should reject the proposed bar order as an inappropriate and unjust windfall to Quiros. Indeed, pursuant to the Settlement Agreement, Quiros will not be providing any new consideration (other than releasing the Receiver from claims that are not identified). Instead, Quiros merely concedes that he has no interest in the Receivership Entities, and that he only has standing in this action to address issues that directly impact him. In return for nothing more than this concession, the Receiver has agreed to provide Quiros with certain assets, and to provide Quiros and members of his family with certain releases from liability. And while the Settlement Agreement is in no manner contingent upon obtaining a bar order, the Receiver also agreed to use his "best efforts" to seek the entry of a bar order precluding all investors and creditors of the Receivership Entities from pursuing any claims against Quiros relating to the issues set forth in the Complaint in this action.

There is no justification for rewarding Quiros with the entry of this or any other bar order, which does absolutely nothing to benefit the Receivership Entities, particularly given that the bar order, as drafted, would unnecessarily injure PUB (and other parties).

The Settlement Agreement more than adequately compensates Quiros for whatever theoretical "value" he is providing the Receivership Entities, and there is no need to further

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[3] PUB is in no manner criticizing the Receiver with respect to his efforts in obtaining recoveries from Quiros. PUB understands that, working with the SEC, the Receiver previously recovered more than $83 million from Quiros, and that Quiros does not have significant additional assets. PUB's objection is that this additional settlement does not involve Quiros providing any meaningful additional consideration, and thus does not justify rewarding Quiros -- and prejudicing PUB and others -- with a bar order.

benefit him, particularly at the expense of others. *See In re GunnAllen Fin. Inc.*, 443 B.R. 908, 911 (M.D. Fla. Bankr. 2011) (denying motion for bar order because "[t]he harm that will be imposed on the [barred parties] as a result of the bar order outweighs any benefit the settlement provides").

II. THE SETTLEMENT AGREEMENT IS NOT CONTINGENT UPON ENTRY OF A BAR ORDER

Rejecting the proposed bar order will not in any way upset the settlement. Indeed, the Settlement Agreement is not contingent upon entry of a bar order in favor of Quiros. Rather, the Settlement Agreement only obligates the Receiver to "use his best efforts to seek the entry of a Bar Order … enjoining the claims of all investors and creditors of the Receivership Entities from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action." (Dkt. 501, p. 26, ¶ 5(d).) Consistent with seeking a bar order, the Receiver has filed this motion.

However, the Receivership Entities will not be injured in any manner by the Court's denial of the motion to enter the bar order, and there certainly is no benefit to the Receivership Entities to justify the entry of a bar order. In fact, the only person who would benefit from the entry of the bar order is Quiros -- who the SEC has accused of being "the architect of an enormous, eight-year-long fraudulent scheme in which he stole more than $55 million" and "orchestrated the misuse of approximately $200 million." (Dkt. 152, at 11.) The Receiver has not, because he cannot, cited any cases in which a Court has entered a bar order that solely benefits the wrongdoer.

III. THE PROPOSED BAR ORDER IS DETRIMENTAL TO THE INTERESTS OF PUB AND OTHERS

The proposed bar order may negatively impact PUB. While PUB believes that it is not liable to any of the investors in the limited partnerships that are included within the Receivership Entities, it has been sued with and without Quiros as a co-defendant as a result of his conduct, including by plaintiffs in *Qureshi, et al. v. People's United Financial, Inc., et al.*, No.: 2:18-cv-00146-cr (D. Vt.). To the extent a bar order is entered in favor of Quiros, it could negatively impact PUB on several fronts, both in preventing PUB from limiting any liability to its proportionate "fault," and in obtaining necessary and relevant discovery.

A. A Bar Order Would Negatively Impact PUB's Ability To Limit Any Judgment Resulting From A Liability Finding

The proposed bar order is extremely broad, and would bar PUB (and others) from bringing Quiros into pending litigation as a defendant or third-party defendant. (*See,* Dkt. No. 501, p. 41.) As a result of Quiros's misdeeds, PUB is currently being forced to defend itself in the District Court of Vermont from claims filed by investors in the Receivership Entities, including that PUB supposedly "aided and abetted" Quiros, the "architect" of the alleged fraud – who himself has not been sued. Under Vermont negligence law, "[w]here recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed." 12 V.S.A. § 1036. However, in some cases, courts have not applied the statute where the other tortfeasors are not named parties to the action. *See, e.g., Levine v. Wyeth*, 183 Vt. 76, 944 A.2d 179 (2006) (several liability only applied where other defendants are actually sued in the litigation and a verdict form includes their name for apportionment of liability); *Plante v.*

Johnson, 152 Vt. 270, 273, 565 A.2d 1346, 1348 (1989) (*dicta*, that "the statute [12 V.S.A. § 1036] provides for apportionment among defendants, suggesting that only those joined in the same action should be considered in apportioning damages").

Accordingly, if the bar order is entered and precludes PUB from adding Quiros as a party, PUB could be precluded from limiting its liability to what a jury finds is its proportionate share of responsibility.

B. The Proposed Bar Order Would Be Improperly Used By Quiros To Attempt To Prevent Discovery

The proposed bar order is so broad that it even bars any party from "investigation" of claims against Quiros, as well as barring all "proceeding[s] of any nature" that "are connected with the released claims." (Dkt. No. 501, p. 41, ¶ 4.) In the event the Court enters the bar order as currently worded, Quiros could argue that it precludes PUB and any other party from issuing any subpoena for his testimony or for documents. Quiros might argue not only that the subpoena is barred, but also that any effort to enforce the subpoena in a court would be barred.[4] Given Quiros's pivotal role as the alleged mastermind in the issues surrounding the Receivership Entities and claims of wrongdoing by the Receiver and investors, to deny parties such as PUB which has been drawn into the litigation only as a result of Quiros's misdeeds, precluding PUB from the opportunity to take discovery from him is improper – particularly given that there is no benefit to anyone except Quiros from entry of the proposed bar order.

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[4] Quiros previously produced documents in other litigation, but due to confidentiality restrictions imposed at the time of production, Quiros may argue that his documents cannot be used in other pending (or subsequently filed) litigation, and that no person can subpoena his records.

REQUEST TO APPEAR AT THE FINAL APPROVAL HEARING

Pursuant to the Court's October 19, 2018 Order, People's United Bank, N.A. and People's United Financial, Inc. hereby request that they be allowed to appear at the Final Approval Hearing on December 19, 2018, through counsel:

James J. Stricker[5]
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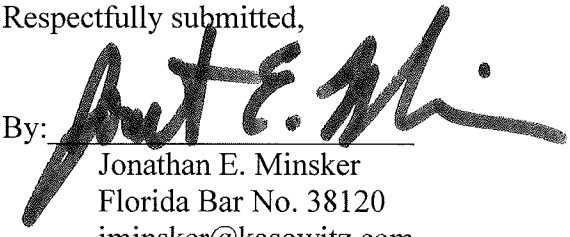
[5] Mr. Stricker is not a member of the Florida bar, but is a member in good standing of the New York bar, and respectfully requests the opportunity to appear before the Court, given that he acted as lead counsel for PUB throughout the *Daccache, et al. v. Raymond James Financial, Inc., et al.*, No.: 1:16-cv-21575-FAM (S.D. Fl.), litigation filed by investors in the Receivership Entities. Mr. Stricker will be filing a motion for admission *pro hac vice*.

CONCLUSION

For the foregoing reasons, defendant PUB respectfully requests that the Court enter an Order denying the motion for entry of a bar order in favor of Quiros, allowing PUB to be heard at the hearing of this matter, and granting such further relief as the Court deems just and proper. PUB reserves all rights, claims and defenses with respect to arguments made by Quiros or others as to the proposed bar order, and any bar order that might be entered.

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon all participating recipients, on this 6TH day of December 2018, in the manner stated in the attached service list.

By:/s/ Jonathan E. Minsker
Jonathan E. Minsker

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