

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:18-cv-61991-BB

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

1 GLOBAL CAPITAL LLC, and
CARL RUDERMAN,

Defendants, and

1 WEST CAPITAL LLC,
BRIGHT SMILE FINANCING, LLC,
BRR BLOCK INC.,
DIGI SOUTH LLC,
GANADOR ENTERPRISES, LLC,
MEDIA PAY LLC
PAY NOW DIRECT LLC, and
RUDERMAN FAMILY TRUST,

Relief Defendants.

**RECEIVER'S EMERGENCY MOTION FOR CLARIFICATION
OF THE FREEZE ORDER AND RECEIVERSHIP ORDER
REGARDING BRIDGE BANK AND OTHER FINANCIAL INSTITUTIONS**

Pursuant to Local Rule 7.1(d), the Court-appointed receiver, Jon A. Sale (the "Receiver"), not individually, but solely in his capacity as Receiver (the "Receiver") for Bright Smile Financing, LLC; BRR Block Inc.; Digi South LLC; Ganador Enterprises, LLC; Media Pay LLC; and Pay Now Direct LLC (each a "Receivership Entity"), by and through his undersigned counsel,

respectfully submits this Emergency Motion for Clarification of the Freeze Order and Receivership Order Regarding Bridge Bank and other Financial Institutions.¹ In support, the Receiver states:

Background

1. The Securities & Exchange Commission (“SEC”) initiated this action on August 23, 2018 [D.E. 1]. That same day, the Court entered a sealed order appointing Jon A. Sale, Esq. as Receiver for the Receivership Entities (the “Receivership Order”),² and a sealed order freezing assets belonging to the Receivership Entities (“Freeze Order”).³

2. Pursuant to the Receivership Order, the Receiver is obligated to, among other things, take immediate possession of the Receivership Entities’ property, assets and estates of every kind, including bank accounts. *See* Receivership Order at ¶ 1. Financial institutions holding funds in accounts in the name of, or for the benefit of, Receivership Entities must cooperate with the Receiver’s efforts to gain control over those funds, according to the Receivership Order. *See* Receivership Order at ¶ 11.

3. Pursuant to the Freeze Order, any bank or financial institution holding funds in the name of, or for the benefit of, any Receivership Entity, Defendant Ruderman, or Relief Defendant Ruderman Family Trust, must, among other things, hold and retain such funds and prohibit removal or transfers of those funds. *See* Freeze Order at ¶ B at pages 2-3.

¹ This Motion is filed by Nelson Mullins Broad and Cassel on behalf of the Receiver. The Receiver will shortly file a motion seeking authorization to retain Nelson Mullins Broad and Cassel *nunc pro tunc*.

² The full title of the Receivership Order is “Sealed Order Granting Plaintiff Securities and Exchange Commission’s Emergency *Ex Parte* Motion for Appointment of Receiver,” entered on August 23, 2018.

³ The full title of the Freeze Order is “Sealed Order Granting Plaintiff’s Emergency *Ex Parte* Motion and Memorandum of Law for Asset Freeze and Other Relief,” entered on August 23, 2018.

4. The Freeze Order specifically identifies, and applies to, Bridge Bank, among other financial institutions. *See* Freeze Order at ¶ B at page 3. As indicated in the Freeze Order, Bridge Bank has three accounts held in the name of Receivership Entity Bright Smile Financing LLC (“Bright Smile”). *Id.*

Bright Smile’s Business

5. Bright Smile makes loans to finance various medical and dental procedures. These loans average \$3,000 to \$4,000 and are for terms no longer than 24 months. Most borrowers pay monthly through the Automated Clearing House (“ACH”), with the funds processed through and deposited at Bridge Bank. Given the nature of the loans, it is imperative that the ACH process not be interrupted. If the ACH transfers are rejected by Bridge Bank, the funds are returned to the borrower and the prospect of funds being available for payment once the ACH process is reestablished is greatly diminished. At this time, no less than approximately \$100,000 in payments is being held up by Bridge Bank.

The Need for Relief

6. On August 23, 2018, the Receivership Order and the Freeze Order were e-mailed to Bridge Bank.

7. Bridge Bank has taken the position that it cannot accept the ACH transfers or any other credits on behalf of Bright Smile as a result of the Freeze Order. Receiver’s counsel has been unable to persuade Bridge Bank that accepting credits in favor of Bright Smile is not prohibited by the Freeze Order, and rather, would assist the Receiver in maximizing the assets and value of the Receivership Estate.

8. Instead, Bridge Bank has asserted that to resume accepting ACH transfers and other deposits into the Bright Smile accounts held at Bridge Bank, Bridge Bank would require a court order clarifying that Bridge Bank is allowed to do so.⁴

9. In addition, because of the way Bridge Bank interprets the Freeze Order and the Receivership Order, Bridge Bank is unwilling to take direction from the Receiver, including direction related to the transfer of Bright Smile funds held at Bridge Bank, without a new court order clarifying that Bridge Bank is allowed to do so.

10. Finally, Bridge Bank revoked Bright Smile's access to review its accounts and submit ACH transactions through the e-banking portal. Bridge Bank has not given the Receiver access to the e-banking portal for these functions.

11. Accordingly, the Receiver requires an order from the Court: (i) clarifying that Bridge Bank must accept credits into the frozen Bright Smile accounts; and (ii) instructing Bridge Bank to comply with directions from the Receiver.

12. For these reasons, the Receiver now seeks an order clarifying these things for Bridge Bank and for any other financial institution that may have similar concerns.

A copy of the proposed order is attached as **Exhibit A**.

Certifications

13. This Motion is filed as an Emergency Motion because funds being paid by Bright Smile's borrowers to Bright Smile are being rejected by Bridge Bank and, once rejected, may be

⁴ Counsel for Bridge Bank claims that Bridge Bank is once again processing incoming ACH transactions for Bright Smile, including approximately \$19,000 in ACH transactions on August 27, 2018. However, neither the Receiver nor any designated Bright Smile employees can access Bridge Bank's e-banking portal to review Bright Smile's accounts and confirm whether this transaction has been processed.

difficult to recover, necessitating immediate relief. A Certification of Emergency is attached as **Exhibit B**.

14. On August 27, 2018, undersigned counsel conferred with counsel for the SEC, which indicated that the SEC did not oppose the requested relief.

15. On August 27 and 28, 2018, undersigned counsel conferred with Bridge Bank's counsel. Bridge Bank's counsel agrees to start accepting credits (including inbound ACH) to Bright Smile's frozen accounts, but: (i) requests a clarifying order anyway; and (ii) seeks additional language in the order regarding the Bank's cash collateral. The Receiver does not believe the additional language requested by the Bank is warranted merely to obtain compliance with the Court's Orders, which are necessary for the benefit of the Receivership Estate.

WHEREFORE, the Receiver respectfully requests that this Court enter the attached proposed order: (i) clarifying that, pursuant to the Freeze Order and Receivership Order, Bridge Bank and any other financial institution with accounts in the name of, or for the benefit of, any Receivership Entity, must accept funds properly deposited into those accounts, including through ACH transfers; (ii) instructing Bridge Bank to take direction from the Receiver, including, but not limited to, directions related to the transfer of such funds to accounts established by the Receiver, directions related to Bright Smile's online e-banking access and e-banking functions, and any other directions necessary for the Receiver to carry out his duties under the Receivership Order; and (iii) for such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record 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 who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

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SERVICE LIST

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Relief Defendants.

**ORDER GRANTING RECEIVER'S EMERGENCY MOTION FOR
CLARIFICATION OF THE FREEZE ORDER AND RECEIVERSHIP ORDER
REGARDING BRIDGE BANK AND OTHER FINANCIAL INSTITUTIONS**

This matter comes before the Court on the Receiver's Emergency Motion for Clarification of the Freeze Order and the Receivership Order Regarding Bridge Bank and Other Financial Institutions, filed on August 29, 2018. Having considered the Motion, and being otherwise fully advised, it is

ORDERED and ADJUDGED:

1. The Receiver's Motion is GRANTED.

2. Pursuant to the Freeze Order¹ and Receivership Order,² Bridge Bank and any other financial institution with accounts in the name of, or for the benefit of, Receivership Entities Bright Smile Financing LLC, BRR Block Inc., Digi South LLC, Ganador Enterprises LLC, Media Pay LLC; or Pay Now Direct LLC, (a) must accept funds deposited into those accounts, including through ACH transfers, and (b) must take direction from the Receiver, including, but not limited to, directions related to the transfer of such funds to Receivership accounts established by the Receiver, directions related to Bright Smile's online e-banking access and e-banking functions, and any other directions necessary for the Receiver to carry out his duties under the Receivership Order.

DONE AND ORDERED in chambers in Miami, Florida, this ____ day of August, 2018.

BETH BLOOM
United States District Court Judge

Copies to:
Counsel of record
Counsel for Bridge Bank

¹ The full title of the Freeze Order is "Sealed Order Granting Plaintiff's Emergency *Ex Parte* Motion and Memorandum of Law for Asset Freeze and Other Relief," entered on August 23, 2018.

² The full title of the Receivership Order is "Sealed Order Granting Plaintiff Securities and Exchange Commission's Emergency *Ex Parte* Motion for Appointment of Receiver," entered on August 23, 2018.

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RECEIVER'S CERTIFICATION OF EMERGENCY

I hereby certify that, as a member of the Bar of this Court, I have carefully examined this matter and it is a true emergency.

I further certify that the necessity for the Receiver's Emergency Motion for Clarification of the Freeze Order and Receivership Order Regarding Bridge Bank and other Financial Institutions has not been caused by a lack of due diligence on my part, but has been brought about only by the circumstances of this case.

I further certify that I have made a bona fide effort to resolve this matter without the necessity of emergency action.

Respectfully submitted,

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