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915 ELM AVENUE CVL, LLC
7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 **SECURITIES AND EXCHANGE**
12 **COMMISSION,**

13 **Plaintiff,**

14 vs.

15 **RALPH IANNELLI and ESSEX**
16 **CAPITAL CORPORATION,**

17 **Defendants.**

Case No.: 2:18-cv-05008

DECLARATION OF DAVID L. COUSINEAU IN SUPPORT OF MOTION TO INTERVENE

Hearing Date: October 24, 2019
Time: 10:00 a.m.
Crtrm: 6D
Judge: Hon. Fernando M. Olguin

Complaint Filed: June 5, 2018
Trial Date: None

1 I, David L. Cousineau, say and declare as follows:

2 1. I am a partner at the law firm of Cappello & Noël LLP, counsel for
3 Intervenor 915 Elm Avenue CVL, LLC (herein after “CVL”) in the above-captioned
4 action. I am a member in good standing of the State Bar of California and have been
5 admitted to practice before this Court. If called upon to testify as to the matters set
6 forth herein, I could and would competently testify thereto.

7 2. After the Court approved Allen Matkins Leck Gamble Mallory & Natsis
8 LLP to represent the Receiver, I, in February 2019, contacted the Receiver’s attorneys
9 to address the freeze issue and to provide CVL’s position that the notes were not
10 enforceable.

11 3. Counsel for the Receiver informed me that he hoped to resolve the CVL
12 issues quickly, recognized that the Property belonged to CVL, and indicated that the
13 freeze could be addressed.

14 4. After some back-and-forth, the Receiver provided its position on the
15 notes. Attached as Exhibit 1 is a true and correct copy of communications between
16 myself and counsel for the Receiver on this point.

17 5. Before we had an opportunity to respond, we learned that the SEC, the
18 Receiver, and Iannelli had jointly asked the Court to maintain the freeze on the
19 Property. CVL was not served with this request.

20 6. I contacted counsel for the SEC, the Receiver, and Iannelli on September
21 10, 2019 about CVL’s intent to intervene to address the freeze of its property and to
22 protect its interests.

23 7. CVL and the Parties had a phone conference on September 12, 2019 and
24 follow-up communications during the following weeks, but were not able to address
25 our differences informally.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 25, 2019 at Santa Barbara, California.


David L. Cousineau

Exhibit 1

David Cousineau

From: Zaro, David <dzaro@allenmatkins.com>
Sent: Tuesday, August 20, 2019 4:10 PM
To: David Cousineau
Cc: del Castillo, Joshua
Subject: RE: Essex/CVL

David,

The purpose of this email is to respond to your below email regarding Essex' claims against 915 Elm Ave CVL, LLC. We disagree both with your analysis and conclusions regarding the obligations of CVL to Essex. In coming to the to the conclusion that CVL is obligated to pay the \$1.5 million promissory note in favor of Essex (the "Note"), we have reviewed the information that we have obtained concerning CVL including but not limited to the purchase and sale agreement, the operating agreement, the amendments, the accounting records, and other communications made available to us. As discussed below, there is nothing in the records to suggest that the Note is not an enforceable obligation.

Furthermore, we simply do not agree that rescission is a remedy that it would be available to CVL in connection with the Note or otherwise. The *Brown v. Grimes* case is not applicable to the facts and circumstances at issue here. In *Brown v. Grimes*, the action for rescission arose out of what amounted to a three party agreement whereby the failure of Brown to pay Ross gave rise to a claim by Ross against Grimes. The case also appears to be premised on Brown's reneging on an oral agreement with Ross (albeit an illegal agreement.) None of those facts are present here.

Essex' ability to fully pay the promissory note that it executed in favor of Gally may give rise to a debt but it has no direct impact upon CVL. CVL is not obligated to pay Gally anything. Moreover, Gally may make a claim against the receivership entities to recover on his note.

It is also notable that the Receiver has not located any records or evidence to substantiate your claims that Essex agreed to independently pay the note to Gally as a condition precedent to collecting the Note from CVL. Certainly, Mr. Reyner would have insisted on this being a term of the Note, the PSA or the Operating Agreement had there been any such agreement.

Nor have you provided evidence to suggest that Essex agreed to forbear from or forego collection of the Note unless CVL was a profitable enterprise. Further, we have not found any documents to suggest that Mr. Reyner did not agree to the stated purchase price for CVL and the subject real property and improvements. Mr. Reyner is a lawyer who signed the purchase and sale agreement which includes a stated purchase price. It is simply not credible to assert that a "well respected media lawyer and member of the Executive Committee at Hogan and Hartson" signed the purchase and sale agreement, three amendments and the Note, all the while believing that CVL was purchasing the assets for approximately 35% less than the stated price.

While these are not all of the facts supporting the Receiver's claims, they alone are sufficient support the recovery by Essex of \$1.5 million from CVL pursuant to the terms of the Note. We continue to welcome a discussion of the issues, however, absent concrete evidence to support a defense to payment, we think that the discussion should turn to how best to satisfy Essex's claim against CVL.

On a separate matter, we are still attempting to recover the membership interests in CVL held by Mr. Iannelli, which interest was funded with Essex proceeds. We are not certain when this will be accomplished, however, we will let you know when we know more.

The Receiver remains interested in attempting to resolve this matter short of litigation. Please let me know whether you would like to discuss this matter further or how you would like to proceed.

Thanks

David

From: David Cousineau [mailto:dcousineau@cappellonoel.com]
Sent: Tuesday, August 13, 2019 10:59 AM
To: Zaro, David <dzaro@allenmatkins.com>
Cc: del Castillo, Joshua <jdelcastillo@allenmatkins.com>
Subject: RE: Essex/CVL

David,

We are disappointed by your response. Not only because of your conclusion, but because you provided no basis for us to consider that conclusion. You mention wanting to resolve this without unnecessary fees or litigation costs. Yet, your lack of explanation prevents us from being able to assess what you see as flaws in our position, or to otherwise move this process forward.

Based on the information we have seen—and the lack of substantive response from you—we continue to believe that CVL has the right to rescind the note. We provided detailed information to you both in phone calls and correspondence, explaining the legal and factual bases for CVL's decision. Our independent analysis has uncovered no basis under the law or the applicable facts for your contrary conclusion. Therefore, we disagree that you are entitled to demand payment, as you did.

Regarding your question about selling the business, such a sale is not in the best interests of CVL at this time, especially before its financial and debt issues are resolved. Additionally, it would be inappropriate for CVL to have significant conversations with you about a sale while you do not represent a member of CVL. You have mentioned numerous times that Essex was close to taking over Ralph Iannelli's membership interests, but that has not, to our knowledge, happened.

Circling back to your closing comment about your desire to resolve this efficiently, you have mentioned that a few times, but we have not seen actions that support it. As mentioned above, you have not provided a basis on which we can resolve the disagreement about the note. We also still do not know who the owner of Iannelli's membership interests will be. Further, although you recognized months ago that the Receiver had improperly frozen CVL's property, you have yet to do anything to correct that mistake. As should be apparent, the frozen property, your unexplained position on the note, and Iannelli's default on his guaranty to the Bank—individually and especially collectively—impair CVL's ability to do financial planning or to create value in the business.

We do want to resolve this efficiently so that CVL's funds are used for the business, not for lawyers. But CVL is not going to be taken advantage of. If you insist on pressuring CVL to pay a significant and unsupported amount, we will take appropriate action to protect CVL. On the other hand, if you want to share your substantive disagreements with our analysis of the note, we will consider them. We cannot, however, simply accept your conclusory statement that CVL must pay the note. We will also consider any reasonable options you suggest for resolving this efficiently.

Please let me know your response as soon as possible so we can all move this process along.

Best,
David

David L. Cousineau
805-564-2444

From: Zaro, David <dzaro@allenmatkins.com>
Sent: Wednesday, July 10, 2019 2:32 PM
To: David Cousineau <dcousineau@cappellonoel.com>
Cc: del Castillo, Joshua <jdelcastillo@allenmatkins.com>
Subject: RE: Essex/CVL

Hi David

I agree, it has taken longer to sort some of these matters out than expected. At least as to CVL, the Receiver has determined that the Promissory Note dated January 14, 2016 is a valid obligation payable by 915 Elm Avenue CVL to Essex. The loan has matured and should be paid in accordance with the terms of the Promissory Note. We have reviewed the defenses to payment that CVL has put forth and that we have discussed and the Receiver does not find them to be supported by the facts or the law. As such, the Receiver demands payment of the Promissory Note.

With regard to the Receiver, and his effort on behalf of Essex to recover Mr. Iannelli's interests in CVL, we expect to conclude this transfer shortly, either by stipulation or Court Order.

With that in mind, the Receiver would like to recover the debt and monetize the interest in CVL without the expenditure of the significant fees and costs of litigation. As such, if CVL is interested in a payment plan or the sale of CVL, the Receiver is interested in discussing all options.

Please let me know how you wish to proceed.

Thanks
David

David R. Zaro Esq.

Partner
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From: David Cousineau [<mailto:dcousineau@cappellonoel.com>]
Sent: Tuesday, July 9, 2019 9:08 AM
To: del Castillo, Joshua <jdelcastillo@allenmatkins.com>; Zaro, David <dzaro@allenmatkins.com>
Subject: RE: Essex/CVL

Gentlemen,

We would appreciate an update on when we can expect a response from you. When we first began speaking, you said that you intended to resolve the CVL issue quickly, especially because you have frozen CVL's property that has no relation to Essex. Yet, we have heard nothing from you since David told me on April 3 he would be back in touch sometime the following week.

Please get back to me so we can get these issues resolved.

Best,
David

David L. Cousineau
805-564-2444

From: David Cousineau
Sent: Monday, July 1, 2019 8:52 AM
To: del Castillo, Joshua <jdelcastillo@allenmatkins.com>; Zaro, David <dzaro@allenmatkins.com>
Subject: RE: Essex/CVL

Josh and David,

Can you please let me know when we can expect to hear from you?

Thank you,
David

David L. Cousineau
805-564-2444

From: David Cousineau
Sent: Wednesday, June 19, 2019 5:04 PM
To: del Castillo, Joshua <jdelcastillo@allenmatkins.com>; Zaro, David <dzaro@allenmatkins.com>
Subject: Essex/CVL

Josh and David,

When we first spoke towards the end of February, you expected to have at least a preliminary analysis completed within a few weeks. At this point, though, I have not heard anything from you since the beginning of April. Please let me know when we can expect to receive your views on CVL. I know that you have a lot going on, but this is significant issue for CVL.

Thank you,
David

David L. Cousineau
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