UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 18-5008 FMO (AFMx)**	Date	**August 3, 2020**
Title	**Securities and Exchange Commission v. Ralph T. Iannelli, et al.**		

Present: The Honorable	Fernando M. Olguin, United States District Judge	
Vanessa Figueroa	None	None
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorney Present for Plaintiff(s):	Attorney Present for Defendant(s):
None Present	None Present

Proceedings: (In Chambers) Order Re: Pending Motion

Having reviewed and considered all the briefing filed with respect to Proposed Intervenor 915 Elm Avenue CVL, LLC's ("CVL") Motion to Intervene and to Remove CVL's Assets from the Court-Ordered Freeze (Dkt. 115, "Motion"), the court finds that oral argument is not necessary to resolve the Motion, see Fed. R. Civ. P. 78(b); Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.

BACKGROUND

On June 5, 2018, the Securities and Exchange Commission ("SEC") filed a complaint against Ralph T. Iannelli ("Iannelli") and Essex Capital Corporation ("Essex") (collectively, "defendants"), alleging that defendants violated the anti-fraud provisions of: (1) Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and (2) Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a). (See Dkt. 1, Complaint at ¶¶ 88-95). The SEC alleged that Iannelli, a "securities fraud recidivist[,]" engaged in a fraudulent scheme by attracting investment through the sale of promissory notes to investors who paid a high rate of return.[1] (See id. at ¶ 4). The investor returns were supposedly based on the strength of Essex's equipment leasing model, in which Essex's lease portfolio would generate sufficient income to offset its borrowing costs and obligations to noteholders. (Id). However, the representations Iannelli made about the investments were false and misleading, (id.), in that the majority of Essex's funds came from promissory note investors and bank loans. (See id. at ¶ 5). According to the SEC, defendants "resorted to a pattern and practice of making Ponzi-like payments (i.e., paying interest and principal owed to investors using other investors' funds)[.]" (Id. at ¶ 6).

On December 21, 2018, the court appointed Geoff Winkler ("Winkler") as the receiver over Essex and its subsidiaries and affiliates, and also placed a freeze on certain bank accounts and

[1] Capitalization, quotation marks, and emphasis in record citations may be altered without notation.

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real properties, including a property located at 915 Elm Avenue, Carpinteria, CA 93013 ("915 Elm" or "the Property"). (See Dkt. 66, Court's Order of December 21, 2018 ("Appointment Order") at 5). Pursuant to consent of the parties, the court entered final judgment as to Iannelli on June 5, 2019 (see Dkt. 93, Iannelli Judgment), and as to Essex on September 9, 2019. (See Dkt. 110, Essex Judgment). On September 9, 2019, the court issued a permanent injunction (Dkt. 113, Court's Order of September 9, 2019 ("Permanent Injunction")), which maintained the freeze imposed by the preliminary injunction order, including the freeze on the Property. (See id. at 3-4). Iannelli is identified as the "listed owner" on the Property. (See id. at 4; see also Dkt. 66, Appointment Order at 5).

In 2015, Iannelli approached William S. Reyner, Jr. ("Reyner") about purchasing a building materials business, which is located on the Property. (See Dkt. 115-1, CVL's Memorandum in Support of [] Motion to Intervene [] ("Memo") at 8; Dkt. 115-3, Declaration of William S. Reyner, Jr. in Support of Motion to Intervene ("Reyner Decl.") at ¶ 8). Reyner and Iannelli formed CVL as a limited liability company to purchase the business and the Property, and were originally joint managers of CVL.[2] (See Dkt. 115-1, Memo at 8; Dkt. 115-3, Reyner Decl. at ¶ 18). CVL financed the acquisition in part through a $1.5 million note that Essex issued to the seller. (See Dkt. 115-1, Memo at 9) ("Iannelli . . . convinced the seller to accept a note from Essex, guaranteed by Iannelli, for $1.5 million as part of the purchase price, and then two additional notes with Essex or Iannelli, again guaranteed by Iannelli, that totaled $250,000 for a portion of the Business inventory."). CVL also executed notes payable to Essex in the amount of $1.625 million in order to provide for and fund the repayment. (See id.). According to CVL, Iannelli funneled money out of CVL for his benefit, and CVL is a victim of Iannelli's and Essex's illicit activities. (See id. at 8 & 10). CVL states that once the SEC filed its complaint in this action, Iannelli, at Reyner's request, stepped down as manager and president of CVL, and Reyner took sole control over its management and operations. (See id. at 10; Dkt. 115-3, Reyner Decl. at ¶ 21).

CVL seeks to intervene to: (1) remove the freeze on the Property; (2) clarify that its bank accounts, over which Iannelli and Essex have no control, are not part of the freeze; and (3) ensure that no further actions are taken related to its assets without its knowledge or an ability to be heard. (See Dkt. 115-1, Memo at 7).

DISCUSSION

The court finds that intervention is not appropriate, either as of right or permissively. With respect to intervention as of right, under Federal Rule of Civil Procedure 24(a),[3] a court must permit any party to intervene in a lawsuit who "claims an interest relating to the property or

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[2] Iannelli has a 39.04% membership interest in CVL. (See Dkt. 115-1, Memo at 8 n. 3).

[3] All further "Rule" references are to the Federal Rules of Civil Procedure unless otherwise indicated.

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transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). The rule is broadly construed in favor of intervention. See Cabazon Band of Mission Indians v. Wilson, 124 F.3d 1050, 1061 (9th Cir. 1997). The Ninth Circuit employs four criteria to determine whether intervention under Rule 24(a) is appropriate: (1) the motion to intervene must be timely; (2) the applicant must have a significantly protectable interest related to the property or transaction that is the subject of the action; (3) the applicant must be situated such that the disposition of the action may impair or impede the applicant's ability to protect that interest; and (4) the applicant's interest must not be inadequately represented by the existing parties. See Arakaki v. Cayetano, 324 F.3d 1078, 1083 (9th Cir. 2003). The burden falls on the applicant to show that all of the requirements for intervention have been met. See United States v. Alisal Water Corp., 370 F.3d 915, 919 (9th Cir. 2004).

Here, the receiver and the SEC do not contest that the Motion was timely filed or that CVL has a protectable interest related to the property at issue. (See, generally, Dkt. 119, Opposition of Receiver, Geoff Winkler, to Proposed Intervenor CVL's Motion to Intervene and to Remove CVL's Assets from the Court-Ordered Freeze at 5-8; Dkt. 120, Plaintiff SEC's Opposition to Non-Party CVL's Motion to Intervene and for Modification of the Court-Ordered Asset Freeze ("SEC Opp.") at 3-5). The dispute thus centers around the final two factors. With respect to the third factor, CVL contends in two sentences that although it is not a defendant in this proceeding or a receivership asset, the parties are "clearly taking actions directed at CVL's assets[,]" (Dkt. 115-1, Memo at 14), adding that the parties are asking the court to make decisions regarding CVL's assets "based on incorrect information[,]" (id.), namely the parties' representations that Iannelli is the listed owner of the Property. (See id. at 6, 8).

CVL's contentions, however, fail to establish how its protectable interests are being or could be impaired. (See, generally, Dkt. 115-1, Memo at 14). As the SEC points out, the loans on the Property are currently in default, and although the court-ordered freeze covers the Property, the permanent injunction also precludes foreclosure on the Property. (See Dkt. 120, SEC Opp. at 4). Instead of impairing CVL's interests, the permanent injunction maintains the status quo and is in furtherance of the receivership's goal to marshal and preserve receivership assets for the benefit of defrauded investors and Essex's creditors.[4] (See id. at 4-5). Accordingly, the court denies intervention as of right. See Perry v. Proposition 8 Official Proponents, 587 F.3d 947, 950 (9th Cir. 2009) ("Failure to satisfy any one of the requirements is fatal to the application, and [the court] need not reach the remaining elements if one of the elements is not satisfied.").

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[4] With respect to the bank account, the permanent injunction specifically identifies one CVL-related bank account, (see Dkt. 66, Appointment Order at 5; Dkt. 113, Permanent Injunction at 3), which CVL concedes is a "former" account that CVL did not use. (See Dkt. 115-1, Memo at 11). Thus no impairment of such account is evident.

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With respect to permissive intervention, under Rule 24(b), a court may grant permissive intervention where: (1) the applicant shows independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense and the main action share a common question of law of fact. See Freedom from Religion Foundation, Inc. v. Geithner, 644 F.3d 836, 843 (9th Cir. 2011). In exercising its discretion on an application for permissive intervention, the court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). The court notes that since the filing of the instant Motion, the court has granted the Receiver's motion to pursue litigation against CVL, which CVL did not oppose. (See Dkt. 177, Court's Order of July 29, 2020). In other words, CVL will have an opportunity to press its claims regarding the Property in a related action.[5] (See Dkt. 120, SEC Opp. at 5). In short, the court declines CVL's request for permissive intervention.

This Order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT Proposed Intervenor 915 Elm Avenue CVL, LLC's Motion to Intervene and to Remove CVL's Assets from the Court-Ordered Freeze **(Document No. 115)** is **denied**.

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Initials of Preparer vdr

[5] The court does not address new arguments or facts raised in Reply.