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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GINA CHAMPION-CAIN AND ANI DEVELOPMENT, LLC,

Defendants, and

AMERICAN NATIONAL INVESTMENTS, INC.,

Relief Defendant.

Case No. 3:19-CV-01628-LAB-AHG

CHICAGO TITLE COMPANY AND CHICAGO TITLE INSURANCE COMPANY'S OPPOSITION TO MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH WILLIAM ADAMS AND RELATED ENTITIES

Date: May 3, 2021
Time: 11:15 a.m.
Courtroom: 14A
Judge: Hon. Larry A. Burns

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I. INTRODUCTION

On March 29, 2021, the Receiver for ANI Development, Inc. ("ANI") requested approval of a settlement between the Receivership and William Adams, a lawyer for Gina Champion-Cain ("Cain") and a key player in the ANI Ponzi scheme. (Dkt. 628-1 ("Motion").) The proposed settlement provides that Mr. Adams' insurer would pay approximately $725,000 to settle Adams' liability in the scheme. (Motion at 5; Dkt. 628-2 ¶ 5.) The settlement is conditioned on the entry of a "bar order": an injunction that would bar **all** other parties from bringing **any** claims against Mr. Adams related to the ANI Ponzi scheme. The bar order enjoins both indemnity claims like those that Chicago Title Company and Chicago Title Insurance Company (collectively "CTC") might bring, but also direct claims, like those that ANI's investors and vendors might claim. (Dkt. 628-3 at 16.) As currently framed, CTC must oppose the bar order, which is deficient in several key respects.[1]

First, although the proposed bar order expressly bars claims against Mr. Adams, his law firms, and his insurer, the Receiver has not *identified* the insurer. Neither CTC nor any party can evaluate how the bar order will affect their interests without knowing who exactly the bar order applies to. And the order must be limited to Adams' conduct, and not include any other potential party that may be covered by that insurer.

Second, the Receiver concedes that a bar order is only appropriate if a so-called "proportionate share" approach is used to determine the liability of non-settling defendants (like CTC). But the proposed bar order does not actually require that proportionate share approach apply, as it must.

And *third*, in light of the exceedingly small amount Mr. Adams is paying in exchange for a bar order – less than one half of one percent of all alleged investor losses in the scheme – the bar order should be modified to preclude Mr. Adams, his law firm,

[1] CTC is entitled to be heard with respect to the Receiver's motion because the proposed bar order is an injunction that would bind CTC, and "[b]efore issuing injunctive relief, the court must provide the affected party with notice and an opportunity to be heard." *Armstrong v. Brown*, 768 F.3d 975, 979-80 (9th Cir. 2014).

or his insurer from pursuing claims related to the scheme against anyone else, including CTC. Otherwise, Mr. Adams and his insurer may in effect take a sweetheart deal from the Receiver, then turn and sue CTC – all while being protected from legitimate indemnity claims. Mr. Adams is paying far, far less than his fair share of the losses at issue, and the Court should not sanction a settlement that advantages him in this way.

Notably, CTC *does not* oppose the proposed Settlement or the proposed bar order on any other grounds. CTC merely seeks the equitable protections necessary in an order that may foreclose any further claims against Mr. Adams, his firm, and his insurer. The protections can be easily provided by the Court through a modification of the order.

II. FACTUAL BACKGROUND

Because the Receiver's motion failed to provide the Court with any background regarding Mr. Adams' role in the ANI scheme, CTC will briefly do so.

Adams is a San Diego attorney whose clients are primarily hospitality businesses such as restaurants, bars, and hotels. (Ex. A at 14 [Adams Dep. Tr. 42:16-19].) He has known Cain both socially and professionally since the 1990s. (*Id.* at 19-20 [Adams Dep. Tr. 47:21-48:11].) In 2011 or 2012, Cain told Adams over lunch that she and her father intended to go into a lending business together. (*Id.* at 23-24 [Adams Dep. Tr. 102:21-103:1].) She asked Adams questions about liquor licensing processes in California, including about liquor license escrows and loans. (*Id.* at 26 [Adams Dep. Tr. 161:6-18].)

The lending business Cain developed in the wake of her conversation with Adams was actually a Ponzi scheme. Cain told investors that she could loan their money to liquor license applicants for high, guaranteed returns. In reality, the applicants were fictional. But Cain had to persuade investors that the applicants she was supposedly lending to were real, so she and her business partner, Kim Peterson, told investors that Adams was referring liquor license applicants to the scheme. This was a lie.

Cain knew that investors might contact Adams and ask him about the scheme. So in 2015, Cain reminded Adams about their previous conversation and told him that

her "financing program" for "ABC license applicants" had gotten "so huge (and successful)" that she was telling people that Adams had "started" the program, since "no one would have believed" Cain "if a lawyer hadn't started it." (Ex. B at 33.) Rather than demand Cain stop falsely advertising his involvement with the liquor license lending program, Adams responded, "Oh good! I can't wait for my royalty checks to start coming in!" (*Id.* at 33.) When Cain replied that she was happy to pay him, Adams consulted with his wife and told Cain he wanted to "accept the money." (*Id.* at 31.) So Cain wrote him a check for $25,000. (Ex. C at 36.) Adams told Cain she was "like a happiness spotlight, shining happiness and warmth wherever you are," and that he was "blown away" by the check. (Ex. B at 30.) Cain told Adams that she "expect[ed] much more" from him and that the check was "a long time coming" because "the biz model" was "named for" Adams. (*Id.*)

Adams' "royalty checks" kept coming: Cain paid him another $25,000 in April 2016, $10,000 in December 2016, $10,000 in May 2017, and $25,000 in September 2017. (Exs. D at 39, E at 42 & F at 46.) Cain also contributed to a non-profit organization Adams helped run and gave him VIP basketball tickets for him and his children to attend an SDSU basketball game. (Exs. G at 49-50 & H at 52.)

In exchange for the nearly $100,000 in cash she gave him, Cain swore Adams to secrecy about the scheme. In September 2017, she warned Adams that a liquor license broker might contact him about the scheme, and that Adams was to "play like you don't know what [the broker] is talking about." (Ex. I at 55.) Adams went further, agreeing to "make it a simple policy not to talk to anyone" about the scheme. (*Id.*) And in November 2018, Cain again told Adams that he was her "secret weapon," and that if anyone contacted him about the scheme, he was to "nod and say yes." (Ex. J at 58.) Once again, Adams agreed to play dumb, saying, "I don't have my lawyer uniform on. Just local Yokel La Mesan." (*Id.*)

Adams' silence – and the payments he received from Cain – were critical to the scheme. Investors lent money to Cain and her businesses based on the representation

that Adams, a purported specialist in liquor license transfers, was furnishing lists of applicants who needed the short-term loans Cain was advertising. And not only were there no such applicants, Adams admitted at his deposition that he had not even handled an ABC application "in maybe decades." (Ex. A at 22 [Adams Dep. Tr. 50:11-19].)

At his deposition, Adams acknowledged the Receiver contended that: (1) Adams was aware that ANI was informing prospective investors that [Adams and his law firm] were the primary source of the license transfer applicants; (2) Adams agreed to not discuss the program with any third parties; and (3) Adams' failure to act and fulfill his obligations as counsel, led to investor losses totaling in the millions. According to the proposed settlement, the "Receivership Entities have valid claims for damages against the Adams Parties relating to the ANI Issues, including for breach of fiduciary duty, professional negligence, aiding and abetting breach of fiduciary duty and aiding and abetting fraud." (*See* Dkt. 628-3 at 7).

III. DISCUSSION

The Receiver's settlement with Adams is conditioned upon the Court entering an injunction, or "bar order," a draft of which was attached to the Motion. (*See* Dkt. 628-3 at 15-17.) The proposed bar order provides that "[a]ll persons and entities whatsoever are forever enjoined and barred" from pursuing any claim against Adams or his related entities – including his unnamed insurer – "related to or involving any of the facts or matters described in this action." (*Id.* at 16.) The bar order will therefore bar any claim by ANI's investors against Mr. Adams, his law firms, or his insurer. It will also bar claims for contribution or indemnity (or anything else) that CTC might wish to bring against Mr. Adams. The bar order has three deficiencies.

First, although the bar order operates to bar claims against Adams' insurer, neither the Receiver nor Adams has revealed *who that insurer is*. It should hardly require saying that the Court should not enter an injunction barring claims against an entity whose identity is a secret. *See* Fed. R. Civ. P. 65(d) (requiring "[e]very order granting an injunction" to "state its terms specifically" and "describe in reasonable

detail . . . the act or acts restrained or required"). This is particularly true because the bar order, as currently drafted, would bar claims against the insurer not only related to Adams, but to *anyone else* implicated in the ANI scheme. (Dkt. 628-3 at 16 (barring all claims "related to or involving any of the facts and matters described in this action").) There may be other insureds with a connection to the scheme, and indeed, Adams was not the only lawyer who facilitated the scheme. Accordingly, the bar order should be modified to (1) identify the insurer, and (2) limit the bar order's application to the insurer against claims related to Adams' conduct only.

Second, the Receiver's motion concedes that entry of the bar order could only be proper if "a 'proportionate share' approach is used . . . to determine the liability of non-settling defendants." (Motion at 6 (quoting *Renfrew v. Toms*, 109 Fed. Appx. 143, 146 (9th Cir. 2004)); *see also Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1230-31 (9th Cir.1989) (explaining the proportionate share approach). What this means is that at trial, the jury will be required to determine not only the proportionate responsibility of the non-settling defendants, but also Adams' proportionate responsibility. Then, if any non-settling defendants are held liable, they will be entitled to a proportionate reduction in their liability equal to Adams' actual share of the blame – regardless of the amount of his settlement. This "proportionate share approach is the law in the Ninth Circuit." *In re Exxon Valdez*, 229 F.3d 790, 796 (9th Cir. 2000). And the approach is sensible because it means that if the Receiver gives Adams a "sweetheart" deal, non-settling defendants will not be "forced to pay the [Receiver] the amount of discount" that the Receiver gives to Adams. *See Nat'l Credit Union Admin. Bd. v. Goldman, Sachs & Co.*, 2015 WL 12699419, at *5 (C.D. Cal. Dec. 21, 2015); *see also Franklin*, 884 F.2d at 1230 (without proportionate share approach, plaintiff "may be tempted to engage in collusion with certain defendants" by accepting a "low partial settlement" to "fund further litigation," or by "effect[ing] low settlements with defendants who had limited resources," then pursuing "wealthier defendants" at trial).

The proportionate share approach is particularly appropriate here because the

Receiver does not even *try* to argue that Mr. Adams' settlement amount is at all related to his actual responsibility. Rather, by justifying the settlement by reference to Adams' policy limits, the Receiver tacitly admits that Adams is not paying anything close to his fair share. Consistent with the Receiver's Motion, the proposed bar order should be modified to specify that the proportionate share approach will apply, so as to forestall any future disputes regarding offsets to which non-settling defendants will be entitled. *See, e.g.*, *Denney v. Deutchse Bank AG*, 443 F.3d 253, 262 (2d Cir. 2006) (settlement agreement that failed to "specify the judgment-reduction method that will be used to compensate nonsettling defendants and third parties for the loss of their contribution and indemnity claims" "unfairly jeopardize[d] the rights of nonsettling parties"); *Nat'l Credit Union Admin. Bd.*, 2015 WL 12699419, at *2 (quoting bar order provision that specified proportionate share approach).

Third, the Court should decline to approve the settlement unless the proposed bar order is modified to also preclude Adams, his law firm, or his insurer from pursuing CTC. As it is currently structured, the bar order prevents CTC from suing Adams for indemnity (or anything else). Yet, conversely, Adams and his insurer could sue CTC for indemnity – or even invent creative direct claims – in an attempt to recoup the little money they have paid. (*See, e.g.*, Dkt. 632 at 2 (Adams arguing that he has "potential affirmative claims" based on "pre-receivership actions by Gina Champion-Cain and others").) CTC is confident any claims against it by Adams would fail. CTC has already agreed to pay investors, according to the terms of its settlement agreements, more than 86 times what Adams is paying the receivership, and Adams' responsibility far outpaces his payment, so an indemnity claim is doomed. But Adams would not be the first to advance spurious claims against CTC in an attempt to obtain a windfall from a deep pocket. And the Receiver, for her part, has said that **everyone** in the case – herself included – should sue CTC on the theory that, because it is a "multibillion dollar corporation" it should pay everyone involved. (Ex. K at 61[April 12, 2021 Hearing Tr. 45:10-14].)

It is therefore not too much to ask that any injunction protecting Adams from additional claims also provide protection to third parties, like CTC, who would otherwise have viable indemnity claims against Adams. CTC does not object in principle to the Receiver resolving Adams' liability. But the Receiver should put Adams' responsibility to bed for good, not assist him in potentially shifting that responsibility to CTC.

IV. CONCLUSION

The Court should deny the Receiver's motion until the defects in the bar order are resolved. Specifically, the bar order should be modified to (1) identify the insurer; (2) limit the bar order's application to the insurer against claims related to Adams' conduct only; (3) preclude Adams, his law firm, or his insurer from pursuing third parties, including but not limited to CTC; and (4) specify that the proportionate share approach applies in any future proceedings.

Dated: April 19, 2021

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By */s/ Steven M. Strauss*
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