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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,

AMERICAN NATIONAL
INVESTMENTS, INC.,

Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG
**ORDER CONDITIONALLY
GRANTING RENEWED MOTION
FOR AUTHORITY TO PURSUE
CLAIMS AGAINST CHICAGO TITLE
[Dkt. 703]**

20 The Securities and Exchange Commission brought this action against
21 Defendant ANI Development, LLC and Gina Champion-Cain (“Cain”), the CEO
22 of ANI Development’s parent, Relief Defendant American National
23 Investments, Inc. (collectively, “Defendants”). The SEC alleged that ANI
24 Development sold fraudulent investment products and asked that the Court
25 require Defendants to disgorge the fruits of this scheme. To this end, the Court
26 appointed Krista Freitag as permanent receiver (the “Receiver”) for ANI
27 Development, American National Investments, and their subsidiaries and
28 affiliates (collectively, the “Receivership Entities”). The Receiver is the Court’s

1 agent for “promot[ing] orderly and efficient administration of” the Receivership
2 Entitites’ assets (the “Receivership Estate”) “for the benefit of creditors.” *S.E.C.*
3 *v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986).

4 In furtherance of that goal, the Receiver may “sue for . . . obligations
5 upon such conditions and for such purposes as the court shall direct.”
6 28 U.S.C. § 3103(b)(A). She now moves the Court for an order permitting her
7 to sue non-parties Chicago Title Company and Chicago Title Insurance
8 Company (together, “CTC”) in California state court. CTC, she alleges,
9 participated in Defendants’ fraudulent scheme by falsely certifying that it would
10 hold investor funds in escrow. Because the Court finds that filing such a suit
11 would benefit the Receivership Entities’ creditors so long as counsel are paid
12 on a contingency basis, the motion is **CONDITIONALLY GRANTED**. CTC’s
13 related request for a stay of related actions that Defendants’ investors brought
14 against CTC in state court is **DENIED WITHOUT PREJUDICE**.

15 **BACKGROUND**

16 The SEC alleges that Defendants engaged in a fraudulent investment
17 scheme under which Cain “offer[ed] investors the opportunity to make high-
18 interest, short-term loans to applicants seeking California liquor licenses.”
19 (Compl., Dkt. 1 ¶ 12). Cain purported to place the funds in escrow accounts
20 subject to a form agreement restricting the funds’ use. (*Id.* ¶¶ 13–18). In truth,
21 Cain placed the funds in accounts subject to a different agreement giving Cain
22 unlimited access to investor funds. (*Id.* ¶ 36). After the SEC filed this action,
23 the Court appointed the Receiver to manage the Receivership Estate,
24 accounting for its assets and distributing the funds received through illegal
25 conduct.

26 Alleging that Cain acted with the full knowledge and participation of the
27 escrow company, CTC, several of Defendants’ investors have filed lawsuits
28 against CTC in San Diego County Superior Court. (See Mot. Ex. B, Dkt. 703-

1 2, at 2 (listing nine related cases against CTC)). Those cases are all before
2 the same judge. (See *id.*) (See, e.g., Receiver’s Proposed Compl., Dkt. 703-1
3 ¶¶ 11, 14). The Receiver now seeks to file a complaint (the “Proposed
4 Complaint”) in the same court as a related action, asserting claims for aiding
5 and abetting fraud, negligence, breach of fiduciary duty, aiding and abetting
6 breach of fiduciary duty, and breach of contract. (Dkt. 703-1 ¶¶ 62–99). While
7 the Receiver’s theories of liability differ from those available to the investors,
8 the Receiver seeks damages that overlap, in whole or in part, with the
9 damages the investors seek. (Dkt. 706-2 at 13:9–17). The Receiver contends
10 that the addition of these theories improves the investors’ ultimate odds of
11 recovery and permits recovery of some categories of damages unavailable
12 under the investors’ claims. (Dkt. 703 at 6). CTC disagrees, and argues that
13 filing the Proposed Complaint would be a waste of receivership funds. (Dkt.
14 706 at 7). If the Court does permit the Receiver to file the Proposed Complaint,
15 CTC asks for an order staying the investors suits.

16 ANALYSIS

17 I. Permitting the Receiver to file the Proposed Complaint Will 18 Likely Provide a Net Benefit to the Estate’s Creditors

19 A receivership’s purpose is to protect the interests of the estate’s
20 creditors. *Hardy*, 803 F.2d at 1038. The principal question presented when a
21 receiver seeks permission to act, then, is whether the proposed action is
22 expected to expand the pot of assets available for distribution to those
23 creditors. The Court has “broad discretionary power” in answering such
24 questions. *Id.*

25 The costs of filing the Proposed Complaint are likely to be outweighed
26 by the benefits, and even moreso if the Receiver pays attorneys’ fees on a
27 contingency basis. The litigation costs here are mitigated by anticipated
28 coordination with related cases in state court and the amount of related

1 discovery already conducted are likely to significantly reduce those costs. (See
2 Dkt. 647 at 12:10–20, 39:13–21). And paying the Receiver’s counsel on a
3 contingency basis further reduces the risk that the suit will result in a net loss
4 to the Receivership Estate.

5 On the other side of the ledger are substantial benefits to creditors. The
6 Receivership Entities may be able to recover and then distribute damages not
7 available under the creditors’ own claims.¹ For example, only the Receiver can
8 recover fees that ANI paid to CTC. (See Dkt. 703 at 6; Dkt. 703-1 ¶¶ 35, 55).
9 Moreover, the Proposed Complaint seeks “consequential damages including,
10 but not limited to, receivership.” (Dkt. 703-1 ¶ 72.) The receivership process
11 itself has been costly to the Receivership Estate and, by extension, its
12 creditors. (See, e.g., Dkt. 721; Dkt. 722). CTC may be liable to the
13 Receivership Estate for some portion of these costs under California law. See
14 *Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 826 (2011) (“[A]ttorney
15 fees incurred as a direct result of another’s tort are recoverable damages.”);
16 *Kass v. Weber*, 261 Cal. App. 2d 417, 423–24 (1968) (costs of receivership
17 available as consequential damages).

18 CTC may also be liable to the Receivership Entities for exemplary
19 damages unavailable to the Receivership Entities’ creditors. CTC owed
20 allegedly owed a fiduciary duty to the Receivership Entities, a duty not owed
21 to the investors. The exemplary damages available for a fraudulent breach of
22 that duty, then, can only be recovered by the Receivership Entities. See
23 *Michelson v. Hamada*, 29 Cal. App. 4th 1566, 1582 (1994) (“[P]unitive
24 damages are appropriate for a breach of fiduciary duty”).

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28 ¹ Contrary to CTC’s suggestion, the Receiver’s admission that the damages
available to the Receiver “overlap” with those available to investors isn’t the
same as an admission that the two sets of damages are congruent. (See Dkt.
706 at 4; Dkt. 706-2 at 04:11–17).

1 Filing the Proposed Complaint offers another benefit to creditors: adding
2 additional theories of liability improves the likelihood of a complete recovery.
3 Plaintiffs commonly assert multiple theories to pursue the same damages to
4 protect against the risk that they will fail to prove one or more claims. The same
5 rationale applies here. Requiring CTC to defend against *all* theories of liability
6 makes it less likely that damages available under one theory but not others will
7 slip through the cracks.

8 Nor is the Court concerned that the problem of overlapping damages will
9 result in duplicative liability. As the parties appear to agree, filing the Proposed
10 Complaint as a related case to the pending investor actions enables the state
11 court to address questions of duplicative liability. (See Dkt. 703 at 4 (seeking
12 to file Proposed Complaint as a related case to pending actions); Dkt. 706 at
13 3 (asking the Court to “at least order the Receiver to sue . . . *in the same court,*
14 *before the same judge*” (emphasis in original)).

15 CTC argues, though, that there is no upside to filing the Proposed
16 Complaint because the Receiver’s theories are “frivolous.” (Dkt. 706 at 5 n.2).
17 But merely pointing to the existence of potential affirmative defenses, as CTC
18 does, isn’t enough to make the claims frivolous.² Nor would this argument be
19 complete, even if the Court were to accept it: it doesn’t address the Receiver’s
20 claims for aiding and abetting fraud, negligence, and aiding and abetting
21 breach of fiduciary duty. The purported weakness of some, but not all, of the
22 Receiver’s claims isn’t enough to persuade the Court that the Receivership
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24 ² CTC’s argument regarding limitations on its fiduciary duty is particularly
25 unpersuasive. Relying on *Summit Fin. Holdings, Ltd. v. Continental Lawyers*
26 *Title Co.*, 27 Cal.4th 705, 711 (2002), it contends that its fiduciary duty was
27 limited to following its client’s instructions. (Dkt. 706 at 5 n.2). But *Summit Fin.*
28 *Holdings* makes clear that this limitation applies only “[a]bsent clear evidence
of fraud.” *Id.* The Receiver alleges that CTC knew of Cain’s fraud and that the
Receivership Entities were victims of it. (See Dkt. 703-1 ¶¶ 62–77).

1 Estate won't benefit from filing its claims.

2 Finally, CTC contends that there's no need to file the Proposed
3 Complaint because CTC is aware of the nature of the claims, its insurers are
4 "fully engaged" in the settlement process, and having the claims on file simply
5 won't affect CTC's willingness to settle. (See Dkt. 706 at 4–5.) But even
6 presuming that CTC will settle the claims, as this argument would require, the
7 argument defies common sense. CTC may be aware of the claims, but as long
8 as it knows, too, that the Receiver doesn't have authorization to file them, the
9 claims' settlement value is a fraction of the value they would otherwise have.
10 Granting authorization to file the claims permits the Receiver to recover their
11 full value.

12 Permitting the Receiver to file the Proposed Complaint is likely to expand
13 the pool of assets available for distribution to creditors and ensure a complete
14 recovery. The motion for authority to pursue those claims is **GRANTED**.

15 **II. A Stay of Investor Lawsuits Isn't Necessary**

16 CTC next asks (though without filing a formal motion) that the Court stay
17 all related state court actions so long as the Proposed Complaint is pending.
18 The Court may issue such a stay where necessary protect the receivership
19 *res*. See, e.g., *Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883, 897 (5th Cir.
20 2019) (court has jurisdiction to bar claims that "directly affect the receiver's
21 assets"). This authority is an exception to the Anti-Injunction Act, 28 U.S.C. §
22 2283, and so it "should not be enlarged by loose statutory construction." *Atl.*
23 *Coast Line R. Co. v. Bd. Of Loco. Eng'rs*, 398 U.S. 281, 287 (1970). Narrowly
24 construed, the necessity exception isn't capacious enough to encompass the
25 circumstances here.

26 Some courts have found it necessary to protect a receivership *res* by
27 enjoining investors in the receivership entities from pursuing state litigation.
28 See, e.g., *Zacarias*, 945 F.3d at 894; *S.E.C. v. Stanford Int'l Bank*, 927 F.3d

1 830, 850–51 (5th Cir. 2019); *S.E.C. v. DeYoung*, 850 F.3d 1172, 1183 (10th
2 Cir. 2017); *S.E.C. v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). In those
3 cases, the courts acted either to protect the receivership *res* from suits brought
4 directly against the receivership entities, *Wencke*, 622 F.2d at 1369, or to
5 protect the receivership’s settlements with third parties where the third parties
6 had conditioned settlement on the issuance of a bar order protecting them from
7 investor suits. *Zacarias*, 945 F.3d at 894; *Stanford*, 927 F.3d at 850–51;
8 *DeYoung*, 850 F.3d at 1183.

9 The investor suits in question here don’t seek to recover from the
10 Receivership Entities, nor have the Receiver and CTC agreed to any
11 settlement that would fall apart absent a stay. And while the overlapping nature
12 of the investors’ claims and the Receiver’s claims could lead to inefficiency or
13 duplicative liability, a federal court’s stay isn’t necessary to avoid these
14 outcomes. The investor suits are consolidated in state court before a single
15 judge. Because the Receiver asks to file the Proposed Complaint as a related
16 case to those investor suits, the Receiver’s action will most likely be heard by
17 the same judge. That court, not this one, is best positioned to determine
18 whether staying the investor actions is necessary for efficient resolution of all
19 actions, and it’s similarly well-situated to determine which parties should
20 recover in the event CTC is found liable to multiple parties for the same
21 damages. The request for a stay of investor actions against CTC is **DENIED**
22 **WITHOUT PREJUDICE.**

23 CONCLUSION

24 The receivership’s purpose in this action is to gather and distribute the
25 Receivership Entities’ assets equitably among their investors. The Court, in
26 turn, must ensure that the Receiver has the authority necessary to maximize
27 the value of those assets. Because the Receiver has persuaded the Court that
28 filing the Proposed Complaint against CTC, with counsel paid on a contingency

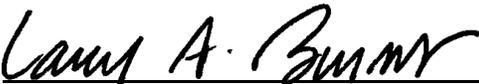
1 basis, will benefit the Receivership Estate, the motion for authority to follow
2 that course is **CONDITIONALLY GRANTED**. (Dkt. 703). The Receiver may
3 file the Proposed Complaint in San Diego County Superior Court, as an action
4 related to the investor suits identified in Exhibit B to that motion, so long as the
5 Receiver's counsel can be retained for that work on the contingency terms
6 previously described to the Court. (See Dkt. 323-1).

7 CTC hasn't demonstrated that it is necessary for this Court to stay the
8 investor suits to preserve the receivership *res* or efficiently manage the
9 receivership, so that request is **DENIED**. But because new circumstances may
10 arise that necessitate such a stay, that denial is without prejudice.

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IT IS SO ORDERED.

Dated: December 13, 2021



Hon. Larry Alan Burns
United States District Judge