

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY
AS RECEIVER FOR ARTHUR LAMAR
ADAMS AND MADISON TIMBER
PROPERTIES, LLC,

Plaintiff,

v.

MICHAEL D. BILLINGS and
MDB GROUP, LLC;
TERRY WAYNE KELLY, JR. and
KELLY MANAGEMENT, LLC;
and WILLIAM B. MCHENRY, JR. and
FIRST SOUTH INVESTMENTS, LLC,

Defendants.

Case No. 3:18-cv-679

Arising out of Case No. 3:18-cv-252,
*Securities and Exchange Commission v.
Arthur Lamar Adams and Madison Timber
Properties, LLC*

Hon. Carlton W. Reeves, District Judge
Hon. F. Keith Ball, Magistrate Judge

**RECEIVER'S REPLY TO MICHAEL BILLINGS AND MDB GROUP, LLC'S
OPPOSITION MOTION FOR ENTRY OF SCHEDULING ORDER
FOR SUMMARY PROCEEDINGS**

By Billings's standard, the Receiver will try the Receivership Estate's claim to "commissions" fraudulently transferred to him in the year 2028.

The Receiver proposed to try her claim via a summary proceeding, which is a faster, more efficient proceeding that will save the Receivership Estate (and Madison Timber victims) considerable expense. The Fifth Circuit Court of Appeals expressly authorizes summary proceedings in these circumstances. Billings's co-defendants have consented to the use of summary proceedings. Billings is the only defendant who has not.

Billings proposes instead a pretrial schedule like one entered in “a pending case with claims very similar to those presented” arising out of the \$7.2 billion Stanford Ponzi scheme. Docket No. 19 at p. 7 (citing *Janvey v. Alguire*, No. 09-724-N-BQ (N.D. Tex.)). The Stanford receivership was created *over nine years ago*. The case that Billings urges this Court to follow *still has not been tried*. That kind of timeline is not reasonable.

Billings clings for authority to one Stanford receivership case. Tellingly, he ignores entirely Fifth Circuit case law that undercuts his position. In *SEC v. Sharp Capital, Inc.*, 315 F.3d 541 (5th Cir. 2003), the Fifth Circuit expressly approved of the use of a “summary judgment type procedure” to resolve a receiver’s claims to assets in the possession of third parties, *id.* at 546, and other district courts in the Fifth Circuit have followed *Sharp*’s lead. *See SEC v. Bjork*, No. 11-2830, 2012 WL 1392082 (S.D. Tex. Apr. 19, 2012); *SEC v. Millennium Bank*, No. 09-50, 2009 WL 10689053 (N.D. Tex. July 21, 2009). Billings complains that the Receiver wants to deprive him of due process, but these cases hold that summary proceedings in equity receiverships are “fair and adequate.” *Sharp*, 315 F.3d at 547.

Billings cites *SEC v. Elliott*, 953 F.3d 1560 (11th Cir. 1992), for purported “cautionary guidance from the Eleventh Circuit” that “While the term ‘summary’ connotes that the procedure [is] abbreviated, it does not mean that the parties [should] receive[] no procedure at all.” Docket No. 19 at p. 6 (quoting *Elliott*, 953 F.3d at 1567). *That guidance comes from Billings, not the Eleventh Circuit.* What the Eleventh Circuit actually said was: “While the term ‘summary’ connotes that the procedure was abbreviated, it does not mean that the parties **received** no procedure at all.” *Elliott*, 953 F.2d at 1567 (emphasis added). The Eleventh Circuit also said “summary proceedings do not per se violate claimants’ due process interest,” and a party must “demonstrate how proceedings violate their due process rights and how fuller proceedings would

better safeguard those rights.” *Id.* 1571. The defendants in *Elliott* failed to make that showing. *Id.* Billings has failed, too.

Billings contends that he will be deprived of “a full and fair process to defend himself against the Receiver’s sweeping claims.” Docket No. 18 at p. 1. Billings complains that he will have to “ask[] permission of the Court to conduct the discovery Mr. Billings needs in order to make out his defenses.” Docket No. 19 at p. 7. But the Receiver’s claims are not “sweeping”; the Receiver’s claims are simply that the law entitles her to recover funds fraudulently transferred to a third party. As the Receiver separately showed in her motion for preliminary injunction, to recover the funds, the Receiver need only show that the funds are proceeds of the Madison Timber Ponzi scheme; Billings’s good or bad faith is irrelevant. Docket No. 17 at p. 8-14. Billings, in his brief, does not suggest any defenses he will assert, or how discovery will prove them.

Regardless, the scheduling order the Receiver proposed expressly provides that Billings may seek discovery “to address any material fact in dispute” in the Receiver’s motion for summary judgment. Docket No. 5-1 at p. 2. *The scheduling order was drafted to ensure both efficiency and due process.* This point is underscored by the fact that every other defendant in this case agreed to it. Billings will receive a “fair and adequate” process if the scheduling order is adopted.

Finally, Billings goes to great pains to tell his audience that the parties would have “resolve[d] their differences” if only the Receiver and her counsel would have agreed “to a reasonable timeline of thirty days” for further settlement negotiations. *See* Docket No. 19 at p. 4. Billings contends “the Receiver had little interest in a good faith effort to negotiate.” Docket No. 19 at p. 3. That the Receiver would not negotiate or settle on *Mike Billings’s* terms does not mean the Receiver is not acting in good faith. It is ironic that a man who purports to be so close to

settlement apparently insists on possibly years of discovery and motion practice to resolve the claims against him.

The Receiver's proposed scheduling order sets forth a fair "summary judgment type proceeding" blessed by the Fifth Circuit. Billings has provided no reason why he should be treated differently than anyone else who finds themselves opposite a fraudulent transfer claim. The Receiver respectfully asks this Court to grant her motion, enter the proposed scheduling order, and allow her to proceed in a fashion that minimizes time and expense to the Receivership Estate.

October 24, 2018

Respectfully submitted,

/s/ Lilli Evans Bass

BROWN BASS & JETER, PLLC
Lilli Evans Bass, Miss. Bar No. 102896
LaToya T. Jeter, Miss. Bar No. 102213
1755 Lelia Drive, Suite 400
Jackson, Mississippi 39216
Tel: 601-487-8448
Fax: 601-510-9934
bass@bbjlawyers.com
Receiver's counsel

/s/ Rebekka C. Veith

FISHMAN HAYGOOD, LLP
Admitted pro hac vice
Brent B. Barriere, *Primary Counsel*
Jason W. Burge
Kristen D. Amond
Rebekka C. Veith
201 St. Charles Avenue, Suite 4600
New Orleans, Louisiana 70170
Tel: 504-586-5253
Fax: 504-586-5250
bbarriere@fishmanhaygood.com
jburge@fishmanhaygood.com
kamond@fishmanhaygood.com
rveith@fishmanhaygood.com
Receiver's counsel

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

In addition, I have separately emailed a copy of the foregoing to:

Andy Taggart
Taggart, Rimes & Graham, PLLC
andy@trglawyers.com

Counsel for Michael D. Billings and MDB Group, LLC

Joseph "Whit" Cooper
Farese, Farese & Farese PA
wcooper@fareselaw.com

Counsel for Terry Wayne Kelly, Jr. and Kelly Management, LLC

Frank W. Trapp
Phelps Dunbar LLP
frank.trapp@phelps.com

Counsel for William B. McHenry, Jr. and First South Investments, LLC

Date: October 24, 2018

/s/ Rebekka C. Veith

Rebekka C. Veith, *admitted pro hac vice*