

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

**MOTION FOR JUDGMENT-DEBTOR EXAMINATION
OF WILLIAM B. MCHENRY**

Plaintiff Alysson Mills, in her capacity as the court-appointed receiver (the “Receiver”) for Arthur Lamar Adams and Madison Timber Properties, LLC moves to examine William B. McHenry under oath and in open court pursuant to Federal Rules of Civil Procedure Rule 69 and Mississippi Code Annotated § 13-1-265.

1.

The Receiver is a judgment creditor of William B. McHenry in the amount of \$3,473,320, as set forth in the final judgment rendered by the United States District Court for the Southern

District of Mississippi, No. 3:18-cv-679-CWR-FKB, on August 16, 2019. Doc. 62 (order granting motion for summary judgment); Doc. 63 (final judgment).

This amount represents the “commissions” McHenry received from investors he induced to invest in the Madison Timber Ponzi scheme. McHenry received 10% of each dollar of each investment made by an investor that he personally recruited.

The Judgment has not been paid or satisfied.

2.

On October 17, 2018, the Receiver filed an amended complaint against William B. McHenry, Jr., First South Investments, LLC, and other of Adams’s “birddog” recruiters. The complaint alleges the defendants received more than \$16,000,000 in Madison Timber “commissions.” The complaint seeks to return that money to the Receivership Estate, to maximize funds available for distribution to victims.

3.

Recognizing that “[t]he assets, and assets traceable to assets, that McHenry received from Adams and Madison Timber belong to the receivership estate,” the Court granted the Receiver’s motion for preliminary injunction and enjoined McHenry and his company, First South Investments, LLC, from, *inter alia*, disposing of any assets, or assets traceable to assets, that McHenry received from his dealings with Madison Timber and from incurring any indebtedness in excess of \$2,500. Doc. 45.

4.

The Court thereafter granted the Receiver’s motion for summary judgment on her fraudulent transfer claim against McHenry and First South Investments, LLC, finding that because “McHenry’s services furthered the Madison Timber Ponzi scheme,” his services were not for

reasonably equivalent value and therefore his commissions were fraudulent transfers under Mississippi's Uniform Fraudulent Transfer Act. Doc. 62. The Court then entered a Final Judgment against McHenry and First South Investments, LLC in the amount of \$3,473,320. Doc. 63.

5.

Federal Rule of Civil Procedure 69(a)(2) allows a judgment creditor to “obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.” Fed. R. Civ. P. 69(a)(2). “Rule 69 was intended to establish an effective and efficient means of securing the execution of judgments.” *JP Morgan Chase Bank, N.A. v. DataTreasury Corp.*, 936 F.3d 251, 256 (5th Cir. 2019) (quoting *U.S. v. McWhirter*, 376 F.2d 102, 106 (5th Cir. 1967)). “Discovery in federal court is designed to afford the parties the right to obtain information pertinent to the pending controversy, and to effectuate that purpose they are to be liberally construed. That basic philosophy applies with equal force whether the information is sought in a pre-trial or in a post-judgment discovery proceeding.” *HCB Fin. Corp. v. Kennedy*, No. 1:10-cv-559, 2016 WL 6216179, at *1 (S.D. Miss. Mar. 28, 2016) (quoting *McWhirter*, 376 F.2d at 106) (internal quotation marks omitted). “The scope of postjudgment discovery is very broad to permit a judgment creditor to discover assets upon which execution may be made.” *JP Morgan Chase Bank, N.A.*, 936 F.3d at 256 (quoting *FDIC v. LeGrand*, 43 F.3d 163, 172 (5th Cir. 1995)).

6.

“Rule 69 allows the judgment creditor to elect to conduct discovery either under the applicable state law or the Federal Rules of Civil Procedure.” *Smith v. Kansa Tech., L.L.C.*, No. CV 16-16597, 2019 WL 2122980, at *1 (E.D. La. May 15, 2019). The Receiver elects to examine McHenry in open court, as provided by Mississippi Code Annotated § 13-1-265:

On ex parte written motion of the judgment creditor, personally or through his attorney, **the court shall order the judgment debtor to appear in court for examination** at a time fixed by the court, not less than five (5) days from the date of service on him of the motion and order, and to produce any books, papers, and other documents relating to his property described in the motion; provided, however, that satisfaction of the judgment shall discharge the judgment debtor from his responsibility to appear for the examination as ordered by the court.
(emphasis added)

7.

The Receiver, as judgment creditor, seeks to examine McHenry in open court on matters pertaining to his property pursuant to Mississippi Code Annotated § 13-1-265 and to have McHenry produce, in open court, certain of his books, papers, and documents that are in his possession and are material to this case, described below:

- a. All cash in McHenry's possession and documentary evidence of cash at his disposal and on deposit at financial institutions, the name of the financial institutions and the address of the branch location usually banked at, and the account number for each account in which McHenry presently has any interest or has had any interest since April 19, 2018;
- b. Documentary evidence of any savings, money market, credit union, passbooks, or other financial institution accounts, used by McHenry, or in which McHenry has any interest, together with the complete statements of those accounts since April 19, 2018;
- c. Documentary evidence of any IRA, Keogh, SEP, or other tax-deferred account used by McHenry, or in which McHenry has any interest, together with the complete statements of those accounts since April 19, 2018;
- d. The checkbook for each checking account used by McHenry, or in which McHenry has any interest, together with the complete monthly statements, cancelled checks, deposit and debit slips since April 19, 2018 for each account;
- e. Documentary evidence of all certificates of deposit, bonds, mutual funds, coupons, and securities in which McHenry has any interest;
- f. Copies of all federal and state income tax returns filed by McHenry or First South Investments, LLC for the calendar years 2017, 2018, and 2019, together with all schedules and other information filed therewith. If the 2019 income tax return has not been filed or is incomplete, then all records that will be used in formulating the 2019 income tax return;

- g. All pay stubs and any and all income received by McHenry since April 19, 2018, including, but not limited to, health plans, employment, rents, royalties, and proceeds from sales of assets;
- h. Copies of all titles to real estate, automobiles, trailers, and other registered movables owned by McHenry individually, as marital community, or business ventures, as of the date this motion is served on him;
- i. Motor Vehicle Certificate of Title (registration) on all vehicles titled in the name of McHenry, together with documentary evidence of all mortgages encumbering said vehicles, and all payment books setting forth the monthly amount due on said mortgage and the current balance;
- j. Books, papers, documents, and records reflecting any present garnishment or judgment proceedings against McHenry;
- k. Copies of all mortgages encumbering the real estate, furniture, electronic equipment, or any other movable property owned or possessed by McHenry individually, as marital community, or business ventures, including all documents setting forth the monthly amount due on said mortgages and the current balance;
- l. All of McHenry's utility and telephone bills, credit card statements, rent receipts, and insurance premium notices since April 19, 2018;
- m. All books, papers, documents, and records pertaining to or evidencing loans or other installment debts owed by McHenry, and reflecting the name and address of each creditor, the monthly amount due and the current balance;
- n. All stock certificates (and/or other evidences of stock ownership) owned or possessed by, or in the name of McHenry in any corporation;
- o. A list of all assets owned by McHenry individually, as marital community, or business ventures;
- p. Documentary evidence of all assets owned by corporations, partnerships, or businesses in which McHenry has any interest;
- q. Copies of transfers of all assets from McHenry to any other person or entity since April 19, 2018;
- r. All deeds, acts of donation, bills of sale, and/or other instruments of conveyance pertaining to any real or movable property transferred, donated, conveyed, or otherwise alienated by McHenry individually, as marital community, or business ventures since April 19, 2018;

- s. All deeds, titles, leases, liens, contracts, and records pertaining to any property, real or movable, in which McHenry has any interest, or held by another for the benefit or use of McHenry, together with the documents evidencing McHenry's ownership interest; and
- t. All records identifying all other assets owned by McHenry individually, as marital community, or business ventures.

8.

The Receiver submits that through the above documents and examination of McHenry in open court, she can establish that McHenry's income and other assets are subject to seizure, which can be used to satisfy the judgment against him. Any recovery from McHenry will return to the Receivership Estate to eventually be distributed to victims of the Madison Timber Ponzi scheme.

CONCLUSION

The Receiver respectfully requests that she be allowed to examine William B. McHenry, as judgment debtor, in open court on a date and time to be fixed by this Court and that William B. McHenry be summoned and commanded to produce in open court the papers and documents described above.

December 12, 2019

Respectfully submitted,

/s/ Lilli Evans Bass

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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.

Date: December 12, 2019

/s/ Kristen D. Amond _____

Admitted pro hac vice