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. TRUSTMARK NATIONAL BANK; BENNIE BUTTS; JUD WATKINS; SOUTHERN BANCORP BANK; and RIVERHILLS BANK, Defendants.	Case No. 3:19-cv-00941 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

RECEIVER'S MOTION FOR LEAVE TO FILE RESPONSE

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the "Receiver"), through undersigned counsel, respectfully moves for leave to file a very short response to the reply briefs filed by Defendants Jud Watkins [Doc. 58] and RiverHills Bank [Doc. 62].

Watkins and RiverHills are the first and only defendants in any of the Receiver's cases to argue the U.S. Supreme Court's opinion in *Caplin v. Marine Midland Grace Trust Co. of New York*, 406 U.S. 416 (U.S. 1972), stands for the proposition that a federal equity receiver cannot accept an assignment of claims.

Watkins and RiverHills made the argument (among others) for the first time in their reply briefs, meaning the Receiver did not have an opportunity to address it in her opposition to their motions.

The Receiver ordinarily would not attempt to file a response to a reply brief, but the Receiver feels it necessary to point out that *Caplin* is distinguishable for several reasons, the principal being that the plaintiff was a Chapter 10 bankruptcy trustee whose powers derived solely from the bankruptcy code. A copy of the Receiver's proposed response is attached.

The Receiver respectfully asks that under the circumstances the Court accept her proposed response and that it be deemed filed.

June 12, 2020

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: June 12, 2020 */s/ Kristen D. Amond*

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RECEIVER'S RESPONSE TO WATKINS'S AND RIVERHILLS'S REPLY BRIEFS

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the "Receiver"), through undersigned counsel, respectfully files this very short response to the reply briefs filed by Defendants Jud Watkins [Doc. 58] and RiverHills Bank [Doc. 62].

Watkins and RiverHills are the first and only defendants in any of the Receiver's cases to argue the U.S. Supreme Court's opinion in *Caplin v. Marine Midland Grace Trust Co. of New York*, 406 U.S. 416 (U.S. 1972), stands for the proposition that a federal equity receiver cannot accept an assignment of claims.

Watkins and RiverHills made the argument (among others) for the first time in their reply briefs, meaning the Receiver did not have an opportunity to address it in her opposition to their motions.

The Receiver feels it necessary to point out that *Caplin* is distinguishable for several reasons, the principal being that the plaintiff in *Caplin* was a Chapter 10 bankruptcy trustee whose powers derived solely from the bankruptcy code. The Receiver's powers do not derive from any statute but instead from this Court's order of appointment, which as supplemented expressly includes the power to accept an assignment of claims.

Caplin also did not purport to address the power to accept assignments. *Williams v. California 1st Bank*, 859 F.2d 664 (9th Cir. 1988), a Ninth Circuit case on which RiverHills and Jud Wakins also rely, did, but solely in the bankruptcy context. Even so, numerous courts have distinguished both *Caplin* and *Williams*.[1] The Receiver is aware of no authority that would support applying either case here.

[1] *E.g.*, *In re Levenson Grp., Inc*., 613 B.R. 418, 424-25 (Bankr. N.D. Tex. 2020) (observing that "[t]he concept of an assignment is not addressed or prohibited by *Caplin*," and asking instead whether "the arrangement is fair and equitable and in the best interests of the estate"); *Calvert v. Zions Bancorporation*, 485 B.R. 604, 611 (W.D. Wash. 2013); *In re Consol. Meridian Funds*, 485 B.R. 604, 612 (Bankr. W.D. Wash. 2013) ("In the case of a Ponzi scheme, investors have a claim that is particularized as to them and they have the exclusive right to pursue the claims. The Complaint alleges that the Investor Plaintiffs have assigned their claims against Commerce Bank to the Trustee. The Trustee has the right under the Plan to bring the suit against Commerce Bank and to distribute any recovery to creditors under the terms of the Plan."); *In re Bogdan*, 414 F.3d 507, 511 (4th Cir. 2005) ("The facts of this case and *Caplin* are substantially different. It does not follow from the reasons advanced by the Court in *Caplin* that the trustee lacks the necessary standing in this case to assert his claims against Bogdan's alleged coconspirators on behalf of Bogdan's estate."); *Semi-Tech Litigation, LLC v. Bankers Trust Co.*, 272 F. Supp. 2d 319, 323 (S.D.N.Y. 2003) ("With respect, this Court does not find *Williams* persuasive. *Caplin* involved an effort to discern whether Congress intended trustees to exercise such a power whereas the issue both in *Williams* and here is whether assignments should be stripped of legal effect because the assignee is a creature of bankruptcy.").

June 12, 2020

Respectfully submitted,

/s/ Lilli Evans Bass

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