

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.

BUTLER SNOW LLP; BUTLER SNOW
ADVISORY SERVICES, LLC; MATT
THORNTON; BAKER, DONELSON,
BEARMAN, CALDWELL & BERKOWITZ,
PC; ALEXANDER SEAWRIGHT, LLC;
BRENT ALEXANDER; and JON
SEAWRIGHT,

Defendants.

Case No. 3:18-cv-866-CWR-BWR

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

Carlton W. Reeves, District Judge
Bradley W. Rath, Magistrate Judge

OBJECTIONS TO ORDER

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC, respectfully responds to Magistrate Judge Rath's "Order Granting Baker Donelson's Motion for Investor Discovery" [135] as follows:

Judge Rath's order overruled the Receiver's relevancy objections to investor discovery but did not authorize unrestricted investor discovery. Instead: "The proportionality of investor discovery will be managed by deposing investors in groups. It will not be determined now that all investors cannot be subpoenaed or deposed. There will be a discovery conference to proceed with choosing the first group of investors to be deposed, and proportionality will be further discussed

through finalizing the terms of a subpoena to investors, and addressing the Receiver's objection to a questionnaire, if any." The Receiver looks forward to the anticipated discovery conference at which the scope of investor discovery will be determined.

The Receiver has no desire to postpone the anticipated discovery conference. The Receiver expressly does not ask the Court to stay Judge Rath's order. The Receiver is grateful to have a decision and looks forward to working with Judge Rath and the parties to determine the scope of investor discovery.

Nevertheless, because Federal Rule of Civil Procedure 72 expressly states that "[a] party may not assign as error a defect in [a magistrate judge's] order not timely objected to," the Receiver objects to Judge Rath's order to the extent necessary to preserve her relevancy objections pending any ultimate decisions on the scope of investor discovery. To summarize those objections:

1. Investor reliance and/or good faith are not elements of any of the Receiver's claims. Baker Donelson argued "the Receiver must establish reliance" on "specific false representations" and that "this reasonable reliance caused the investors' damages" [124 at 10-11] but the reality is investors need not have ever even heard the two words "Baker Donelson" much less communicated with Baker Donelson sufficiently to have received representation from it. This is not a securities fraud case. The plaintiff is the Receivership Estate, not individual investors.

Without accepting Baker Donelson's argument, Judge Rath concluded questions of comparative fault and/or damages might nevertheless warrant investor discovery, at least until disputed legal issues can be resolved by dispositive motion. The Receiver expressly reserves to the right to press any argument in her opposition to Baker Donelson's motion to conduct investor discovery in any briefing that she might file in connection with any future dispositive motion.

2. There is no precedent for broad, invasive investor discovery. Judge Rath acknowledged “there is no clear, universal law dictating ... how discovery should proceed.” [135 at 15]

Judge Rath distinguished cases in which courts refused investor discovery on the primary basis that those cases did not involve negligence claims. But that distinction, to the extent it exists in each such case, does not necessarily undermine those courts’ rationales.

Judge Rath concluded *Newman v. Mayer Brown, LLP*, 252 So. 3d 755, 758 (Fla. Dist. Ct. App. 2018), is more like this case because that receiver also obtained assignments from investors. But the big difference is that he relied on those assignments (which he obtained from all investors) for the specific claims in question. Here, the Receiver does not rely on her assignments (which she obtained from only some investors) because the Court expressly declined to consider “whether the receiver also has standing via assignments from investor-victims.” [70 at n.5]

3. Some defendants have said they intended to use investor discovery to embarrass victims.¹ Judge Rath is correct that the Receiver does not represent individual victims, but their privacy concerns are not a matter of disinterest to her. Of course she is sensitive to any defendant’s

¹ See, e.g., *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss. July 22, 2021), at Doc. 207 (S.E.C. and Receiver’s Joint Reply to Objections to Joint Motion for Protective Order: “The only reason defendants want to call out victims by name is to publicly shame them. Take defendants at their own words: Whether victims are ‘victims’ is what defendants want to litigate. UPS says victims ‘were not “victims” at all’ but instead ‘were very wealthy individuals who benefited’ from the Madison Timber Ponzi scheme. Trustmark says the real victims are the innocent ‘bankers and businesses’ who allegedly aided and abetted a decades-long fraud. Trustmark falsely suggests that the Receiver has ‘strategically selected investors for public appearances in an effort to build bias and sympathy.’”) and Doc. 308 (S.E.C.’s Reply to Objections to Joint Motion for Protective Order: “Given the posturing of the Ancillary Defendants, the SEC writes separately to remind the parties and non-parties that this is an SEC enforcement action. ... In this case, it has been established since day 1 that Defendants Arthur Lamar Adams and Madison Timber Properties, LLC violated the antifraud provisions of the federal securities laws. Moreover, it is equally clear that there are a number of Madison Timber investors who likely will lose some or all of their investment in Defendants’ scheme. Those investors are victims in the only sense that matters here, and the Court saw fit, at the request of the SEC, to appoint the Receiver in this case in order to help them recover some of their investment.”).

use of these proceedings to unjustly harass any victim, and she reserves the right to continue to voice those concerns as they arise.

4. The Receiver fully expects that, with Judge Rath's management, any investor discovery will be proportional to the needs of this case. The Receiver reserves the right to object to any investor discovery that she believes is not.

The Receiver appreciates Judge Rath's and the Court time, and she looks forward to the anticipated discovery conference at which objections stated herein may be mooted.

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: October 11, 2024

/s/ Kaja S. Elmer