

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

SUNWEST MANAGEMENT, INC.,
CANYON CREEK DEVELOPMENT, INC.,
CANYON CREEK FINANCIAL, LLC, and
JON M. HARDER,

Defendants,

DARRYL E. FISHER, J. WALLACE
GUTZLER, KRISTIN HARDER, ENCORE
INDEMNITY MANAGEMENT, LLC,
SENETET LEASING COMPANY, FUSE
ADVERTISING, INC. KDA
CONSTRUCTION, INC., CLYDE
HAMSTREET, and CLYDE A . HAMSTREET
& ASSOCIATES, LLC,

Relief Defendants.

Case No. 09-CV-6056-HO

**[PROPOSED] ORDER GRANTING
ADDITIONAL PRELIMINARY
INJUNCTION AND APPOINTING
RECEIVER FOR ADDITIONAL
ENTITIES**

[PROPOSED] ORDER GRANTING ADDITIONAL
PRELIMINARY INJUNCTION AND APPOINTING RECEIVER
FOR ADDITIONAL ENTITIES

This matter came before the Court, after mediation before Judge Velure as ordered by the Court, with reference to Plaintiff Securities and Exchange Commission's ("Commission")¹ request for an additional preliminary injunction and for the further appointment of the Receiver over additional entities. The Court has taken judicial notice of the pleadings previously filed in this case.

GOOD CAUSE appearing, the Court finds:

1. This Court has jurisdiction over the parties and the subject matter of this action, pursuant to Sections 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), and Sections 21(d)(3), 21(e), and 27 of the of the Securities Exchange Act of 1934 ("Exchange Act"). 15 U.S.C. §§ 77t(d)(1), 77v(a), 78u(d), and 78u(e).
2. This District is an appropriate venue for this action pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act. 15 U.S.C. §§ 77v(a) and 78aa.
3. Darryl E. Fisher, J. Wallace Gutzler, Kristin Harder, and Carol Fisher ("the individual Relief Defendants") stipulate and agree to an asset freeze for their assets, including those held by each individually and those they hold jointly, including but not limited to the assets of Carol Fisher, to provide for the ability of this Court to grant final effective relief in equity and at law.
4. The Commission believes that the Court should appoint Michael Grassmueck as a receiver (the "Receiver") with all rights and powers of a federal equity receiver for those entities listed on Exhibit "A2" to this Order ("A2 entities.")

¹ Capitalized terms not defined in this Order have the same meaning as in this Court's March 10, 2009 Order. In all other respects, this Order is independent of the March 10, 2009 Order and shall not affect the pending appeal. References to the March 10, 2009 Order are for purposes of language incorporation, historical reference, or consistency, but this Order is not in any way a modification to or a superseding order vis-à-vis the March 10, 2009 Order.

NOW THEREFORE:

I.

IT IS ORDERED that Defendants and Relief Defendants and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, and all others who receive actual notice of this Order, by personal service or otherwise, and each of them, shall hold and retain within their control, and otherwise prevent any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of, any and all assets (whether real or personal property, including money, securities, commodities, choses in action and all other property of any kind whatsoever) of the A2 entities, whether held by or under the direct or indirect control of Defendants or Relief Defendants or any of them, or whether held in any of their names or for any of their direct or indirect beneficial interest, in whatever form such assets may presently exist and wherever located. All financial and brokerage institutions, debtors and bailees, escrow holders, and all other persons and entities that have possession, custody or control of any A2 entity assets, or owe money to any of the Defendants or Relief Defendants related to the A2 entities, and that receive actual notice of this Order, shall turn over and deliver such assets to the Receiver.

II.

IT IS FURTHER ORDERED that, notwithstanding any other provision of this Order, J. Wallace Gutzler ("Gutzler"), Darryl Fisher and Carol Fisher shall be and are authorized, pending resolution of the Commission's claims against Darryl Fisher and Gutzler, to expend such sums as may be reasonably necessary in the ordinary course of their personal, family and household affairs (and in the case of Gutzler, ordinary course expenses associated with any rental property) consistent with the budgets agreed upon during mediation on May 13, 2009. Further, Darryl

Fisher and Gutzler shall be paid monthly allowances in the amounts and upon the terms agreed upon during the various mediations and finalized during the mediation of May 13, 2009.

III.

IT IS FURTHER ORDERED that the asset freeze on the assets of Gutzler, Darryl Fisher and Carol Fisher provided for in this Order shall specifically exclude the following assets of Darryl Fisher and Carol Fisher: cash on hand and funds on deposit with Central Willamette Community Credit Union, Scudder, and Blue Mountain Credit Union (all in amounts as disclosed at the mediation on May 13, 2009), and shall exclude the following assets of Gutzler: cash on hand, Pioneer Trust Account, and funds on deposit in Wells Fargo checking and savings accounts.

IV.

IT IS FURTHER ORDERED that the Receiver is appointed to act as receiver, with all rights and powers of a federal equity receiver, for the A2 entities to: (1) pursue and resolve claims, as more fully described below; (2) ascertain the financial condition of the A2 entities and the disposition of investor funds; (3) determine the extent of commingling of funds between and among the Defendants, Relief Defendants, the A2 entities and the Receivership Entities; (4) preserve the books, records and documents of the A2 entities; and (5) be available to respond to investor inquiries. A2 entities that are subjects of Chapter 11 cases as of May 15, 2009, shall proceed, but shall otherwise be subject to and enjoy the benefits and protections of this Order (including the injunction in Section VI. below), and by this Order, the reference is withdrawn to this Court for any A2 entity in a pending Chapter 11 case. Clyde A. Hamstreet, as Chief Restructuring Officer ("CRO"), shall have authority to use the cash and assets of each A2 entity in the ordinary course of the business of such A2 entity, and except as otherwise limited by the

terms of this Order, to use such cash and assets for the operation and restructure of any and all Receivership Entities, and to pay the Receiver for the Receiver's pursuit of third-party claims.

V.

IT IS FURTHER ORDERED that to effectuate the foregoing as to the A2 entities, the Receiver is hereby empowered to:

1. Pursue and resolve all claims and causes of action, including disgorgement, avoidance actions and offsets and counterclaims against third parties relating to the A2 entities (collectively, "claims") in cooperation with the MC and the CRO; provided, however, that the Receiver shall not commence litigation against any lender to an A2 entity without the prior consent of the CRO;
2. Have access to all books, records and documents of the A2 entities;
3. Establish a bank account or use existing bank accounts to pay expenses and otherwise administer the receivership as provided herein;
4. Take necessary steps to investigate and recover assets that may have been conveyed to third parties by any A2 entity or otherwise concealed;
5. Take necessary steps to investigate and account for the disposition and use of funds obtained by the Defendants, the Relief Defendants, the A2 entities, and all entities related to the A2 entities;
6. Engage and employ persons, including accountants, attorneys, special litigation counsel and experts, to assist in the carrying out of the Receiver's duties and responsibilities hereunder;

7. Take necessary steps to investigate claims which may now or hereafter exist as a result of the activities of the A2 entities, and their past and present employees, agents, subsidiaries and affiliates;

8. Subject to privilege review and appropriate confidentiality, as agreed or determined by the Court, image all laptops, computers, PDAs, smart phones and related electronic storage devices of the A2 entities, and have access to all information contained therein, including the passwords and logon information related to the same; and

9. Except as specifically limited by the terms of this Order, exercise all other rights and powers of a federal equity receiver for the A2 entities.

VI.

IT IS FURTHER ORDERED that all Defendants and Relief Defendants shall cooperate with the Receiver and the CRO. No creditor of, investor in or claimant against any of the A2 entities or assets of the A2 entities, or against any of the individual Relief Defendants or their assets, or any person acting on behalf of any such creditor, investor or claimant, shall take any action to interfere with or harass the Receiver or the CRO or otherwise interfere with the Receiver's or the CRO's control, possession or management of the A2 entities or any of their assets or the individual Relief Defendants or any of their assets, including but not limited to, pursuing, noticing, or otherwise commencing, or concluding a foreclosure sale, or the filing of any lawsuits, liens, garnishments, or encumbrances or bankruptcy cases to impact the A2 entities or any of the assets subject to this Order, without further order of this Court.

VII.

IT IS FURTHER ORDERED that except for any act of, or exceeding, gross negligence, and to the fullest extent permitted by law or any applicable code of professional conduct, none of

the Receiver, the CRO, the MC, the Official Committee of Unsecured Creditors (the “UCC”) or the Official Tenants-in-Common Committee (the “TICC”) appointed in Harder’s Chapter 11 bankruptcy case, nor any of their respective officers, employees, members, representatives, professionals or other agents (collectively, the “Protected Persons”), shall be liable for any loss or damage incurred by any of the Defendants, Relief Defendants or A2 entities, or by any of their respective officers, employees, professionals or other agents, or by creditors, investors, claimants, vendors, or others, or be subject to any right of action, by reason of any act performed or omitted to be performed by any of the Protected Persons in connection with the discharge of their duties and responsibilities under this Order. The Receiver shall not have any responsibility or liability for past, present or future taxes in connection with the operations of the A2 entities or otherwise. No bond shall be required in connection with the appointment of the Receiver, the CRO or the MC.

VIII.

IT IS FURTHER ORDERED that the A2 entities and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are restrained and enjoined from, directly or indirectly, destroying, mutilating, concealing, transferring, altering or otherwise disposing of, in any manner, any documents, including all books, records, computer programs, computer files, computer printouts, contracts, correspondence, memoranda, brochures, or any other documents of any kind, in their possession, custody or control, however created, produced or stored (manually, mechanically, electronically, or otherwise), pertaining in any manner to the A2 entities.

IX.

IT IS FURTHER ORDERED that from the funds controlled by the CRO in connection with the Lone Star sale proceeds attributable directly or indirectly to the equity interests of Jon M. Harder, Darryl E. Fisher, and Gutzler, the CRO shall immediately make available to the Receiver amounts in accordance with Article IX of the March 10, 2009 Order. All other funds controlled by the CRO in connection with the Lone Star sale proceeds attributable directly or indirectly to the equity interests of Jon M. Harder, Darryl E. Fisher, and Gutzler shall be available to the CRO for the purposes of operation and restructure of the Receivership Entities. The CRO's expenditures of Lone Star sale proceeds shall be consistent with a budget (as revised from time to time by the CRO, the "Budget"). The Budget shall be filed with the Court by May 26, 2009. Should any interested party object to the Budget, such objection shall be filed and served no later than two business days after the Budget is filed, and such objection shall be resolved by mediation before Judge Velure as soon as practicable. Lone Star proceeds attributable to equity interests of third-party investors will be sequestered and accounted for by the CRO subject to further order of this Court.

X.

IT IS FURTHER ORDERED that fees and expenses of the Receiver, CRO, MC, and their respective professionals, and those of the professionals for the UCC, TICC, and bankruptcy estate of Jon M. Harder for services that relate to the A2 entities, or operations or restructure, shall be paid in accordance with Article XI of the March 10, 2009 Order.

XI.

IT IS FURTHER ORDERED that the proceeds of claims collected by the Receiver will be set aside and held by the Receiver and be available to satisfy investors' and creditors' claims

pursuant to a plan of distribution, if any, approved by this Court. The Commission shall cooperate with the Receiver to cause any recoveries from claims to benefit the investors and creditors to the extent needed for them to obtain full satisfaction of their claims.

XII.

IT IS FURTHER ORDERED that no term of this Order shall be construed as limiting the Commission's ability, or that of any other state or federal authority, to pursue full relief against all Defendants and Relief Defendants in this litigation and any other defendants and relief defendants as may be added as parties to this litigation or named as parties in other litigation.

XIII.

IT IS FURTHER ORDERED that each of the Receiver, CRO, UCC, TICC, MC, the Defendants, the Relief Defendants, the Commission, creditors and other parties in interest shall have the right to apply to the Court to modify the terms of this Order.

XIV.

IT IS FURTHER ORDERED that all rights of the Jon Harder bankruptcy estate, Darryl Fisher, Gutzler, and the creditors of the Jon Harder bankruptcy estate, to assert rights to the Lone Star funds, and all rights of the Receivership Estate to object, subordinate or oppose any assertions regarding the Lone Star funds, are fully reserved without prejudice.

DATED: May __, 2009

Hon. Michael R. Hogan
United States District Court Judge

EXHIBIT A2
Entity Names

Albany Specialty Care, LLC
Amethyst Arbor Assisted Living & Memory Care, LLC
Amethyst Inn Property, LLC
Aspen Wind Assisted Living Community, LLC
Callahan Court Specialty Care, LLC
Callahan Retirement Cottages, LLC
Callahan Village Assisted Living, LLC
Callahan Village II, LLC
Cedar Park CP Property, LP
Cedar Park CPGP, LLC
Clatsop Assisted Living, LLC
Cornelius Retirement, L.L.C.
Court at Round Rock Limited Partnership
Desert Amethyst Property, LLC
Desert Amethyst Retirement, LLC
Eagle Springs Specialized Care, LLC
Emerald Springs Assisted Living, LLC
Falls River Court Memory Care, LLC
Falls River Village Assisted Living, LLC
Garden Estates GP, LLC
Garden Estates of Corpus Christi Limited Partnership
Garden Estates of Temple Limited Partnership
Garden Estates of Tyler Limited Partnership
Garnet of Casa Grande Assisted Living, LLC
Greatwood Retirement & Assisted Living Community, Limited Partnership
Greatwood Retirement & Assisted Living, LLC
Harder Development III, LLC
Harder Development IV, LLC
Hawks Ridge Assisted Living Community, LLC
Inn at the Amethyst Assisted Living, LLC
KAMAC Assisted Living, LLC
La Grande Assisted Living, LLC
Lake Wylie Assisted Living, LLC
Meadow Wind Assisted Living Community, LLC
Memphis KG Property, LLC
Mobile KP Property, LLC
Morrow Heights, LLC
Neawanna by the Sea Limited Partnership
Northglenn Assisted Living, LLC
Osprey Pointe Cottages, LLC
Park Place Assisted Living, LLC
Port Orchard Alzheimer's Care, L.L.C.
Regal Estates Assisted Living Limited Partnership
Regal Estates GP, LLC
Round Rock GP, LLC
Sacramento GC Assisted Living, LLC
Settler's Park, LLC
Sierra Hills Assisted Living Community, LLC
Silver Creek DEF Property, LLC
Spring Wind Assisted Living Community, LLC
Temple GP, LLC
The Suites Assisted Living Community, LLC
Tyler GP, LLC
Ukiah Assisted Living, LLC
Wenatchee Care, L.L.C.
Wenatchee Senior Care, L.L.C.