

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
WOODBRIIDGE GROUP OF COMPANIES, LLC, <i>et al.</i> , ¹)	Case No. 17-12560 (KJC)
)	
Debtors.)	(Jointly Administered)
)	
COMERICA BANK,)	
)	
Plaintiff,)	
)	
vs.)	Adversary Proceeding
)	No. 18-[_____] (KJC)
WFS HOLDING CO., LLC,)	
)	
Defendant.)	
)	

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff Comerica Bank (“Comerica”), by and through its undersigned attorneys, for its Complaint for Declaratory Judgment and Injunctive Relief against, WFS Holding Co., LLC (the “Defendant” or “WFS”), pursuant to sections 105(a) and 362 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 7001 and 7065 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), alleges as follows:

INTRODUCTION

1. This adversary proceeding seeks declaratory and injunctive relief to stay and enjoin the continued prosecution of the California State Court Action (defined below) filed by Defendant

¹ The last four digits of Woodbridge Group of Companies, LLC’s federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14140 Ventura Blvd #302, Sherman Oaks, California 91423. Due to the large number of debtors in these cases (the “Debtors”), which are being jointly administered for procedural purposes only, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ noticing and claims agent at www.gardencitygroup.com/cases/WGC, or by contacting counsel for the Debtors.

against Comerica. Comerica seeks entry of a judgment declaring that: (i) the claims asserted in the California State Court Action are property of the Debtors' estates; (ii) the Defendant is violating the automatic stay; (iii) the California State Court Action is void *ab initio*; and (iv) the Court should enjoin further prosecution of the California State Court Action by Defendant. The California State Court Action should be stayed to prevent needless and expensive duplicative litigation, which will be to the detriment of the Debtors, their estates and their creditors; and prevent substantial indemnification claims from accruing against the Defendant and its only known asset, the Account.

2. In addition, this adversary proceeding seeks a declaration as to the rightful parties with interests in Account No. 1895244141 (the "Account") at Comerica opened in the name of Defendant. There are multiple parties who have asserted an interest in the Account, including the following:

- a. the Defendant filed the California State Court Action seeking, among other things, a declaration that it is the rightful owner of the Account;
- b. the Debtors have claimed that they have an interest in the Account and have asserted that Comerica should not release any of the funds in the Account;
- c. the Securities and Exchange Commission (the "SEC") has obtained an asset freeze order that prevents release of the funds in the Account to Defendant; and
- d. as a result of the California State Court Action, Comerica is entitled to indemnification for its fees and expenses, including attorneys' fees and expenses from the Account.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the claims raised in this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157 and the Amended Standing Order of Reference dated as of February 29, 2012 of the United States District Court for the District of Delaware.

4. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. This is an adversary proceeding brought pursuant to Rules 7001 and 7065 of the Bankruptcy Rules.

6. There exists a substantial controversy between Comerica and the Defendant of sufficient immediacy and reality to warrant the relief requested.²

THE PARTIES

7. Comerica Bank is a Texas banking association with its principal place of business in Dallas, Texas.

8. The Defendant is a Delaware limited liability company.

FACTUAL ALLEGATIONS

9. The Defendant was formed as a Delaware limited liability company on September 14, 2017. (Declaration of David Neier (“Neier Dec.”) filed contemporaneously herewith, Ex. A).

10. On November 20, 2017, Robert Shapiro (“Shapiro”) opened the Account at Comerica, representing himself as the sole manager and authorized signatory for the Account. (Neier Dec., Ex. B). In opening the Account, Defendant agreed that the Business and Personal Deposit Account Contract (the “Contract”) applies to the Account. (Neier Dec. Ex. B at 1).

11. Among other things, the Contract provides that all account holders “agree to indemnify and hold [Comerica] harmless (including the payment of reasonable attorney’s and paralegal fees and other costs) against all liability to third parties arising out of or in connection with the terms, conditions or services provided under the Contract or otherwise pursuant to your

² Pursuant to Local Bankruptcy Rule 7008-1, Comerica consents to the entry of final orders or judgments by this Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

instructions.” (Neier Dec. Ex. C at §3.06). Thus, pursuant to the Contract, the California State Court Action gives rise to indemnification claim against the Defendant.

12. In addition, the Contract provides that Comerica (i) has a security interest in the Account for any amounts owed to Comerica by the Defendant, and (ii) Comerica may set off against the Account for any amounts owed to Comerica by the Defendant. (Neier Dec. Ex. C. at §2.12 and §2.14).

13. Defendant requested certain additional “treasury management services” in connection with the Account and filled out an application requesting such services and executed various agreements for such services. (collectively, Neier Dec. Ex. D). As part of the request for such services, Defendant agreed to a Master Agreement. (Neier Dec. E).

14. The Master Agreement entered into by Defendant provides in relevant part that:

4.4 Security Interest. Customer [WFS] hereby provides Bank, to the extent allowed by Law, a continuing and perfected security interest in any and all funds in Designated Accounts, and in any other account maintained by Customer with Bank and/or any of its Affiliates, to satisfy Customer’s financial and other obligations in connection with any Service and/or to otherwise secure present and future indebtedness Customer owes to Bank.

* * *

12.4 Indemnification. Customer [WFS] shall Indemnify Bank in connection with: ... (d) any third party claim that a Customer instruction or other Customer communication contravenes or compromises the rights, title or interest of any third party and/or contravenes any Legal Requirements, court order or other mandate or prohibition with the force or effect of Law....

(Neier Dec. Ex. E at §§4.4, 12.4).

15. On or about December 1, 2017, Woodbridge Group of Companies entered into a “Transition Services Agreement” with Defendant to provide consulting services to the Debtors for \$175,000 payable monthly in advance, with the first payment due upon the execution of the Transition Services Agreement. (See Ex. B., Declaration of Lawrence R. Perkins (“Perkins

Declaration”) in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief dated December 4, 2017 [Docket No. 12], a copy of which is annexed to the Neier Dec. as Ex. F).

16. Commencing on December 4, 2017 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

17. According to the Perkins Declaration, “Mr. Shapiro has agreed to continue to provide consulting services through his controlled entity WFS Holding Co. LLC ... pursuant to a Transition Services Agreement entered into with Woodbridge Group of Companies, LLC.” (Neier Ex. F, Perkins Declaration ¶27).

18. On December 20, 2017, the SEC commenced an action against Shapiro, numerous Woodbridge entities, and others, captioned *SEC v. Robert H. Shapiro, et al.*, Case No. 17-24624-MGC (S.D. Fla. December 20, 2017) (the “SEC Action”). The complaint in the SEC Action named the Defendant herein, WFS Holding Co., LLC, as a “relief defendant” and alleged that:

Relief defendants Jeri Shapiro (Shapiro’s wife), Woodbridge Realty of Colorado, LLC d/b/a Woodbridge Realty Unlimited (“Woodbridge Realty”), Woodbridge Luxury Homes of California, Inc. d/b/a Mercer Vine, Inc. (“Mercer Vine”), Riverdale Funding, (“Riverdale”), Schwartz Media Buying Company, LLC (“Schwartz Media”), and WFS Holding Co. LLC (“WFS”) all received proceeds of the fraud without any legitimate entitlement to the funds.

(Neier Ex. G at ¶11).³

19. There can be no dispute that the entity sued by the SEC in the SEC Action (WFS Holding Co., LLC) is the same entity that is the plaintiff in the California State Court Action and the Defendant herein. The SEC describes its relief defendant WFS as follows:

WFS is a Delaware Limited Liability Company formed in September 2017 and owned and managed by Shapiro. Pursuant to Woodbridge’s bankruptcy filing and a Transition Services Agreement (“Transition Agreement”) dated December 1, 2017, Shapiro has been retained as a consultant to Woodbridge at the monthly rate of \$ 175,000 paid to WFS for the benefit of Shapiro.

³ The SEC Action was originally filed under seal. It has since been unsealed.

Should the purported independent manager terminate this consulting agreement without cause, 50% of the total yearly amount of \$2.1 million will be immediately due under the Transition Agreement. Shapiro was paid the first \$175,000 in advance upon executing the Transition Agreement. Without any legitimate basis, WFS received investors' proceeds emanating from the Defendants' securities fraud.

(Neier Ex. G at ¶33).

20. On December 20, 2017, the SEC obtained an order in the SEC Action that, among other things, freezes the assets of various individuals and entities (the "SEC Freeze Order"). (Neier Ex. H). The SEC Freeze Order freezes assets with respect to, *inter alia*, the following:

Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Defendants Shapiro, RS Trust ... directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this order by personal service, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

(Neier Dec. Ex. H).

21. The same day the SEC Freeze Order was entered, on December 20, 2017, Comerica was served by the SEC with the SEC Freeze Order by facsimile. (Neier Dec. Ex. I).

22. Following receipt of the SEC Freeze Order, Comerica placed a hold on the funds in the Account, because the Account is under the control, and apparently for the benefit, of Robert Shapiro. Such a hold is expressly permitted under the Contract, which provides, among other things that:

Freezing Your Accounts, Conflicting Demands/Disputes. If we determinate that a dispute has arisen or there is uncertainty regarding the ownership or control of an Account or its funds or we believe a transaction affecting the Account may be fraudulent or may violate any law or regulation, or are subject to a court order requiring us to hold the funds, or we are requested by a state or local agency to freeze the account or reject a transaction due to the suspected financial abuse of an elder or dependent adult, you authorize us, at our sole discretion to: (1) freeze the Account and

refuse transactions until we receive written proof (in form and substance satisfactory to us) of each person's right and authority over the Account and refuse transactions until we receive written proof (in form and substance satisfactory to us) of each person's right and authority over the Account and its funds or a court order authorizing us to release the funds ... (4) request instructions from a court of competent jurisdiction at your expense regarding the Account or transaction.... The existence of the rights set forth above shall not impose an obligation on us to assert such rights or to deny a transaction.

(Neier Dec. Ex. C at §3.05).

23. On February 28, 2018, the Debtors filed a motion to reject the Transition Services Agreement. (*See* Debtors' Motion for Entry of an Order, Pursuant to Section 365(a) of the Bankruptcy Code, Authorizing Rejection of Transition Services Agreement *Nunc Pro Tunc* to the Rejection Date dated February 28, 2018 [Docket No. 673], a copy of which is annexed to the Neier Dec. as Ex. J). In the motion, debtor Woodbridge Group of Companies, LLC states that:

It has determined that Mr. Shapiro's consulting services are unnecessary and of no value to the Debtors' estates. Indeed, the New Board understands that Mr. Shapiro has not actually provided any consulting services under the TSA and in any case the Debtors have received absolutely no benefit from the TSA.

(Neier Dec. Ex. J at ¶15).

24. On March 12, 2018, attorneys for WFS and other defendants filed a motion to dismiss the SEC Action in the United States District Court for the Southern District of Florida, arguing that the SEC's complaint against WFS was defective and that "[w]holly absent from the SEC's allegations are the crucial details required for WFS Holding to craft a response...." (Neier Dec. Ex. K). The motion to dismiss is *sub judice*.

25. On March 19, 2018, this Court entered an order (the "Rejection Order") authorizing the rejection of the Transition Services Agreement (*see* Order Authorizing Rejection of Transition Services Agreement *Nunc Pro Tunc* to the Rejection Date dated March 19, 2018 [Docket No. 778], a copy of which is annexed to the Neier Dec. as Ex. L). The Rejection Order provides that:

Any claims, defenses, or causes of action that the Debtors or their estates may have against Mr. Shapiro, Consultant, or any of their affiliates, including, without limitation, claims for fraud, breach of fiduciary duty, breach of contract, setoff, recoupment, equitable subordination, and avoidance claims arising under chapter 5 of the Bankruptcy Code, whether or not arising under or related to the TSA, are not waived and are expressly and fully preserved.

(Neier Dec. Ex. L at ¶3).

26. The Rejection Order further provides that:

The Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

(Neier Dec. Ex. L at ¶ 6).

27. On March 28, 2018, the Defendant filed an action against Comerica in California Superior Court, captioned *WFS Holding Co., LLC, v. Comerica Bank, et al.*, Civ. Case No. BC699929 (Cal., L.A. Super. Ct., March 28, 2018) (the “California State Court Action”). (Neier Dec. Ex. M).

28. The California State Court Action is indisputably a collateral attack on the SEC Freeze Order. The complaint in the California State Court Action seeks a ruling as to whether the funds in the Account are “subject to an asset freeze order.” (Neier Dec. Ex. K at ¶10). Indeed, the entire complaint in the California State Court Action is based on allegations that the SEC Freeze Order does not apply to Defendant and that Comerica is misinterpreting the SEC Freeze Order (*see, e.g.*, Neier Dec. Ex. M at ¶¶ 6, 7, 9, 10, 11, 19, and 23).

29. The interpretation of the SEC Freeze Order issued by the United States District Court for the Southern District of Florida is clearly not a matter that should be decided by the California Superior Court for Los Angeles County. Moreover, the Defendant has already sought dismissal of the SEC Action in the United States District Court for the Southern District of Florida, the court that issued the SEC Freeze Order. The California State Court Action is therefore wholly

improper, in addition to being a violation of the automatic stay and void *ab initio*.

30. On April 9, 2018, counsel for the Debtors advised counsel for Comerica that the funds in the Account were, in their view, property of the Debtors, stating that:

The Debtors hereby advise Comerica Bank that the Debtors claim an interest in the funds held in the Account, and in no event should Comerica Bank release any funds held in the Account without the Debtors' approval or except as otherwise ordered by a court of competent jurisdiction.

(Neier Dec. Ex. N).

31. The Bankruptcy Court is the only court that has jurisdiction over the Account and the multiple competing claims of the Defendant, the SEC, the Debtors, and Comerica to the funds in the Account. The Account was established by Defendant to receive payments from the Debtors to Shapiro for postpetition services pursuant to the Transition Services Agreement. An advance payment was made by the prepetition Debtors for postpetition consulting services to be provided by Shapiro pursuant to the Transition Services Agreement. The SEC Freeze Order was subsequently issued with respect to the Account. The Debtors rejected the Transition Services Agreement and have alleged that no benefit was provided to the Debtors with respect to the funds paid by the Debtors to Defendant. The Debtors subsequently advised Comerica not to release any funds from the Account. The Defendant has challenged the validity of the SEC Freeze Order in the United States District Court for the Southern District of Florida and in the Superior Court of California, but the Debtors have disputed the Defendant's right to the funds in the Account in this Court. And, lastly, Comerica asserts it has a right to at least some of the funds in the Account, given that (i) Comerica is contractually indemnified with the respect to the California State Court Action commenced by Defendant against Comerica, and (ii) under the Contract, Comerica is entitled to its costs and expenses in bringing this adversary proceeding to determine the rightful owner of and interests in the Account.

COUNT I

(Declaratory Relief against the Defendant)

32. Comerica repeats and re-alleges the allegations contained in Paragraphs 1 through 31 above as though fully set forth herein.

33. Section 362(k) of the Bankruptcy Code confers a private right to sue for damages on behalf of an individual injured by a violation of the automatic stay. Bankruptcy Code section 362(k) provides in relevant part that “an individual injured by any willful violation of a stay provided by this section [362] shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” A corporate creditor such as Comerica is an “individual” within the meaning of Bankruptcy Code section 362(k) and therefore has standing to commence actions with respect to stay violations, including for punitive damages and attorney’s fees.

34. In addition, section 362(a)(3) of the Bankruptcy Code prohibits the commencement or continuation of “any act to obtain possession of property of the estate.” The California State Court Action seeks funds in the Account in which the Debtors claim an interest. The commencement and continued prosecution of the California State Court Action violates the automatic stay imposed by section 362(a) of the Bankruptcy Code.

35. Accordingly, the California State Court Action should be stayed, declared void *ab initio*, and the Defendant should be enjoined from continuing to prosecute the California State Court Action.

36. There exists a substantial controversy between Comerica and the Defendant of sufficient immediacy and reality to warrant the issuance of a declaratory judgment pursuant to 28 U.S.C. § 2201. A prompt judicial determination of the respective rights and duties of the parties

in these respects is necessary and appropriate.

COUNT II

(Injunctive Relief against the Defendant)

37. Comerica repeats and re-alleges Paragraphs 1 through 36 above.

38. Section 105(a) of the Bankruptcy Code provides, in relevant part, that the Court may “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Comerica seeks an injunction enjoining the continued prosecution of the California State Court Action by the Defendant under section 105(a) of the Bankruptcy Code.

39. The authority granted by section 105(a) of the Bankruptcy Code includes the power to issue injunctions staying litigation in other courts and to stay creditors from pursuing such litigation when it is detrimental to the Debtors, their estates and their creditors.

40. The likelihood of irreparable harm to the Debtors and their estates in the absence of injunctive relief far outweighs any harm to the Defendant.

41. If the California State Court Action is not enjoined, the Debtors’ estates and their creditors, including Comerica, will likely suffer harm, including: (i) the risk that claims which are property of the estate are adjudicated in other courts for the benefit of Defendant rather than creditors of the Debtors; and (ii) the accrual of substantial indemnification claims against the Defendant as a result of the continued prosecution of the California State Court Action.

COUNT III

(Interpleader)

42. Comerica repeats and re-alleges Paragraphs 1 through 41 above.

43. There are completing claims to the funds in the Account by the Defendant, the SEC, the Debtors, and Comerica. Comerica is entitled to place an administrative hold on the Account,

set off against the Account with respect to its fees and expenses, including attorneys' fees and expenses incurred in connection with the Complaint, and is secured with respect to such fees and expenses by virtue of its possession of the funds in the Account. The competing claims to the funds in the Account by the Defendant, the SEC and the Debtors are all junior and subordinate to the claims of Comerica.

44. There exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment pursuant to 28 U.S.C. § 2201 determining the rightful owners and parties with interests in the funds in the Account. A prompt judicial determination of the respective rights and duties of the parties in these respects is necessary and appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request entry of a judgment against the Defendant as follows:

- a. a declaration that the California State Court Action violates the automatic stay, and the California State Court Action should be and is stayed pursuant to section 362 of the Bankruptcy Code;
- b. an injunction pursuant to sections 105(a) and 362 of the Bankruptcy Code barring the continued prosecution of the California State Court Action by the Defendant;
- c. a declaration as to the rightful owners and parties with interests in the funds in the Account, with such interests being junior and subordinate to the interests of Comerica;
- d. awarding Comerica its reasonable fees and expenses, including attorneys' fees and expenses, incurred in connection with this action out of the funds at issue in the Account;
and
- e. such other and further legal and equitable relief as this Court deems just and

proper.⁴

Dated: April 26, 2018
Wilmington, Delaware

ASHBY & GEDDES, P.A.

/s/ F. Troupe Mickler IV

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Counsel to Comerica Bank

⁴ Comerica reserves the right to amend this Complaint, including, without limitation, to add claims under 11 U.S.C. §362(k) for actual damages, including costs and attorneys' fees, and punitive damages, against the Defendant.

CERTIFICATE OF SERVICE

I, F. Troupe Mickler IV, hereby certify that on April 26, 2018, I caused one copy of the foregoing document to be served upon the parties on the attached service list first class mail.

/s/ F. Troupe Mickler IV
F. Troupe Mickler IV (#5361)

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