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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 v.

15 ROBERT YANG; et al.,

16 Defendants.

17 and

18 YANROB'S MEDICAL, INC.; et al.,

19 Relief Defendants.
20
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Case No. 5:15-CV-02387-SVW (KKx)

**SUPPLEMENTAL BRIEF OF
RECEIVER IN SUPPORT OF:
(1) OMNIBUS MOTION FOR ORDER
APPROVING RECOMMENDED
TREATMENT OF CLAIMS AND
AUTHORIZING RECOMMENDED
DISTRIBUTION ON ALLOWED
CLAIMS [Dkt. Nos. 189-190]; AND
(2) SPECIFIC OBJECTION TO
PROOF OF CLAIM OF CELTIC
BANK [Dkt. No. 191]**

Date: December 11, 2017
Time: 1:30 p.m.
Ctrm: 10A
Judge: Hon. Stephen V. Wilson

22 Pursuant to this Court's November 14, 2017 Minute Order [Dkt. No. 198],
23 Stephen J. Donell (the "Receiver"), the Court-appointed receiver for Defendants
24 Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care Lynwood, LLC, and
25 their respective subsidiaries and affiliates (collectively, the "Receivership Entities"),
26 hereby submits the following Supplemental Brief in support of his pending Omnibus
27 Motion for Order Approving Recommended Treatment of Claims and Authorizing
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1 Recommended Distribution on Allowed Claims (the "Omnibus Claims Motion")
2 [Dkt. Nos. 189-190] and his Specific Objection to Proof of Claim of Celtic Bank
3 (the "Objection to the Celtic Claim") [Dkt. No. 191].

4 **I. PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENT.**

5 In response to the questions presented in the Court's Minute Order, the
6 Receiver's responses are as follows:

7 1. A court order compelling the turnover of money from a deposit account
8 may result in a creditor with a security interest in that deposit account losing that
9 interest when the money is turned over. Put simply, here, Celtic Bank had a security
10 interest in two bank accounts (the "Accounts"), not in the money in the accounts.
11 Celtic Bank's right to act against the money in the accounts was therefore
12 extinguished when the Receiver sought the turnover of the money and requested its
13 withdrawal.

14 2. Deposit accounts, even certificates of deposit subject to a security
15 interest, are subject to a depositor's unfettered right of withdrawal. Here, the
16 Receiver had the right to withdraw the money from the Accounts prior to Celtic
17 Bank exercising its right to foreclose on the money, thereby eliminating Celtic
18 Bank's security interest in the money withdrawn.

19 By way of additional clarification, the Receiver does not contest that Celtic
20 Bank had a security interest in the collateral for its loans, including the two
21 Accounts, into which the Receivership Entities had previously deposited \$2 million
22 in funds which were derived directly from investors in the Receivership Entities.
23 The Receiver's position is merely that:

24 A. There are two independent bases for finding that Celtic Bank does not
25 have a security interest in the \$2 million previously held in the Accounts. First,
26 Section V of the Court's December 11, 2015 Preliminary Injunction, Order
27 Appointing Receiver, Freezing Assets, and Providing for Other Ancillary Relief (the
28

1 "Appointment Order") [Dkt. No. 18] required the bank to turn over the money to the
2 Receiver, leaving Celtic Bank with a security interest in bank accounts that held no
3 money. Second, the Receiver, as the depositor, had the right to choose to withdraw
4 the money on deposit with Celtic Bank at any time, again leaving Celtic Bank with
5 only a security interest in empty accounts. As the owner of the Accounts, the
6 Receiver had an unfettered right of withdrawal.

7 B. Celtic Bank elected to forego enforcement of its security interest in the
8 pre-receivership period (or petition for relief from the stay imposed by the
9 Appointment Order to do so after the Receiver's appointment) and instead decided
10 to conclude a nonjudicial foreclosure of the Fontana Property, the real property
11 collateral for its loans. As a consequence, Celtic Bank has become a general
12 *unsecured* creditor of the Receivership Entities whose claim is subject to denial.
13 This is so because California law bars collection of deficiencies where, as here, a
14 secured creditor concludes a non-judicial foreclosure of its collateral and because
15 the funds in the deposit accounts having been withdrawn, there is no so-called cash
16 collateral for Celtic Bank to pursue.

17 **II. ARGUMENT.**

18 **A. QUESTION ONE: This Court's Appointment Order, As Well As**
19 **The Receiver's Withdrawal, Rendered The Funds On Deposit At**
20 **Celtic Bank Unavailable To The Bank Notwithstanding Its Security**
21 **Interest.**

22 The law of secured transactions is clear: a lender's security interest in a
23 deposit account does not follow the money in the account after the money is
24 withdrawn. Cal. Comm. Code § 9312(b)(1). Specifically, a security interest in a
25 deposit account may be perfected "only by control[.]" *Id.* Here, Celtic Bank lost
26 control of the money in the Accounts both at the time of the Receiver's appointment
27 and when the Receiver requested to withdraw the money, on March 18, 2016.

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1 The Court need not decide the impact of the Appointment Order upon Celtic
2 Bank's security interest, as the Receiver's March 2016 withdrawal was sufficient to
3 render the funds unavailable to the bank. That said, Section V of the Appointment
4 Order defined the assets of the Receivership Entities that were "attributable to funds
5 derived from investor" as receivership assets ("Receivership Assets"), vested the
6 Receiver with exclusive authority and control over such Receivership Assets, and
7 directed "[a]ll persons and entities having control, custody or possession of any
8 Receivership [Assets] ... to turn such property over to the Receiver." In other
9 words, Celtic Bank was obligated, by the express language of the Appointment
10 Order, to return the money on deposit to the Receiver at the time of his appointment,
11 and lost control at that time, by operation of law.

12 Independent of the Appointment Order, however, and as a second and
13 independent basis for holding that the money is no longer available to Celtic Bank,
14 the bank lost its security interest when the Receiver, standing in the shoes of the
15 Receivership Entity depositors, acted to withdraw the money from the Accounts. As
16 discussed in the Receiver's prior briefs and below, as the owner of the Accounts, the
17 Receiver had the absolute right to withdraw the money. 12 C.F.R. § 229.10. When
18 he did so on March 18, 2016, Celtic Bank lost control over the money along with its
19 security interest.

20 Celtic Bank did not immediately turn over the money in the Accounts to the
21 Receiver, as required by federal and state banking law, and the Appointment Order.
22 Nor did it do so after the Receiver completed his forensic accounting, traced all
23 funds in the Accounts to Receivership Entity investors, and, on March 18, 2016,
24 demanded to withdraw the money. (See, e.g., Dkt. Nos. 48, 50, Ex. 1.) Instead,
25 Celtic Bank persisted in its refusal to make the required turnover, forcing the
26 Receiver to file an *ex parte* application for order to show cause re: civil contempt
27 [Dkt. No. 50], after which the Court entered an order (the "Final Turnover Order")
28

1 [Dkt. No. 94] compelling Celtic Bank to turn the funds over to the Receiver, subject
2 to a reservation of rights by both parties.

3 Contrary to Celtic Bank's suggestion that the Receiver's position is
4 disingenuous, it is entirely consistent with the law and the facts. The Final Turnover
5 Order gave neither Celtic Bank or the Receiver any new rights: it simply compelled
6 Celtic Bank's compliance with federal and state law, as well as the turnover
7 provisions of the Court's original Appointment Order¹, while preserving the rights of
8 Celtic Bank and the Receiver to argue their competing legal positions. However,
9 because the Appointment Order and the Receiver's withdrawal demand had *already*
10 divested Celtic Bank of control of the funds in the deposit accounts well before the
11 Receiver's *ex parte* application was ever filed, or the Final Turnover Order entered,
12 Celtic Bank had no rights to preserve.² Cal. Comm. Code §§ 9312, 9314. Here,
13 Celtic Bank has not offered any law whatsoever to refute the Receiver's claim to the
14 money.

15 Once the funds were effectively withdrawn from the Accounts, by virtue of
16 the compulsive turnover provisions of the Appointment Order and the Receiver's
17 formal withdrawal demand, Celtic Bank lost control over the money in the
18 Accounts, leaving nothing available against which the bank's security interest could
19 attach.³

21 ¹ Notably, Celtic Bank turned over only \$2 million to the Receiver, and did not
22 turn over accrued interest on the deposits, identified in its previously submitted
23 Certified Statement [Dkt. No. 49, Ex. A].

24 ² With respect to footnote 1 of the Court's Minute Order, the Receiver is not
25 suggesting that the Court's orders altered the priority of Celtic Bank's security
26 interest. He is merely stating that, under a simple application of the Commercial
27 Code, the interest was lost as against the money withdrawn from the Accounts.
28 The Receiver's equitable arguments are presented only to demonstrate that Celtic
29 Bank sat on its rights in the pre-receivership period.

30 ³ Moreover, to the extent that the Court determines that Celtic Bank somehow
31 maintained control over an account subject to an assignment agreement, the
32 Receiver would emphasize that Celtic Bank only ever acquired an assignment of
33 the first of the two Accounts, which contained only \$1 million of the \$2 million
34 in issue. See highlighted text of Exhibits 4 and 8 of the concurrently filed loan
35 documents.

1 The law is also clear on this issue: Where a depositor withdraws or expends
 2 money in an account that is subject to a security agreement prior to the enforcement
 3 of that security, the withdrawn funds are no longer available to the secured party.
 4 See, e.g., Orix Fin. Servs., Inc. v. Kovacs, 167 Cal.App 4th 242, 250 (2008)
 5 (holding that unsecured creditor's satisfaction of judgment from debtor's bank
 6 account superseded secured creditors rights against the funds in that account, and
 7 specifically noting that "any suggestion that the rights of a secured creditor cannot
 8 be compromised by junior creditors is not persuasive."). Here, Celtic Bank stands in
 9 the same shoes vis-à-vis the Receiver as did the secured creditor and the depositor in
 10 Orix, whose payment of a judgment from funds subject to a security interest left the
 11 secured creditor without money against which the security could attach. Put simply,
 12 the debtor's effective withdrawal of the secured money to pay its judgment acted as
 13 an intervening event that compromised the secured creditor's security interest, just
 14 as the turnover provisions of the Appointment Order and the Receiver's formal
 15 withdrawal demand⁴ did here.

16 **B. QUESTION TWO: The Receivership Entities And The Receiver**
 17 **Had The Right To A Turnover Of The Funds On Deposit At Celtic**
 18 **Bank.**

19 As a preliminary matter, the Appointment Order vested the Receiver with the
 20 exclusive and absolute right of control over the money on deposit at Celtic Bank.
 21 The order required the turnover of *all* Receivership Assets to the Receiver –
 22 however and wherever held – and contained *no exceptions* for assets against which a
 23 putative creditor might state a claim. Indeed, it went even further, barring a party in
 24 possession of Receivership Funds from "transferring, setting off, receiving,
 25

26 ⁴ By operation of law, the Receiver stands in the shoes of the Receivership
 27 Entities. See, e.g., United States v. Plache, 913 F.2d 1375, 1381 (9th Cir. 1990);
 28 FDIC v. O'Melveny & Myers, 61 F.3d 17, 19 (9th Cir. 1995). As such, a
 withdrawal in the Receiver's favor is the same as a withdrawal in favor of the
 Receivership Entity depositors.

1 changing, selling, pledging, assigning, liquidating or otherwise disposing of such
2 assets[,] as well as prohibiting third parties from "taking any action ... which
3 would ... [i]nterfere with the Receiver's efforts to take control, possession, or
4 management" of any such assets, including by resorting to "self-help" or "creating or
5 enforcing a lien upon any Receivership [Assets.]" (See Dkt. No. 18 at 3:24-28 and
6 11:16-26.) Celtic Bank's suggestion that its security interest followed the money in
7 the Accounts after its effective withdrawal is wrong, amounting to a claim that
8 Celtic Bank preserved its rights against the money exclusively through a willful
9 violation of the Appointment Order or via a denial of its depositor's rightful
10 withdrawal of the money from the Accounts.

11 Perhaps more importantly, while conceding that its loan documents contained
12 no control agreements regarding the Accounts, Celtic Bank argued at the
13 November 13, 2017 hearing (and for the first time) that the fact that the deposit
14 accounts in issue were in the form of certificates of deposit ("CDs") somehow left
15 them beyond the reach of a depositor withdrawal. Notably, Celtic Bank has
16 provided no legal or factual support for this argument. In fact, the law presupposes
17 guaranteeing the free flow of funds to deposit holders, in the interests of commerce.
18 See, e.g., 12 C.F.R. § 229.10 (requiring banks to make deposited funds available to
19 depositors no later than the business day following a deposit); Cal. Comm. Code
20 §§ 11404 (requiring banks to honor payment orders against depositor accounts
21 within one business day); see also Barkley and Barbara Clark, The Law of Bank
22 Deposits, Collections and Credit Cards, § 7.06[1], pp. 7-16, (3d ed. 2017). That the
23 Accounts in issue here may have been called CDs is irrelevant. Notably, at no time
24 since the Receiver's appointment has Celtic Bank produced any evidence that early
25 withdrawal was prohibited, not merely subject to a penalty, as is sometimes the case.

26 CDs are merely one form of deposit account that typically provide for a fixed
27 interest rate on deposited funds. In other words, a CD is just like any other deposit
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1 account with respect to the account holder's right to withdraw money. See, e.g.,
 2 Murphy v. Pac. Bank, 130 Cal. 542, 548 (1900) ("certificates of deposit are
 3 understood to represent money left with a bank or banker, and which is to be
 4 retained until the depositor demands it"); see also Black's Law Dictionary (2d ed.
 5 Online) (defining "certificate of deposit (CD)" as "a time deposit issued by a bank to
 6 a depositor that pays a fixed or variable interest rate") (internal quotation and
 7 capitalization omitted). While a depositor may in some cases be subject to an
 8 interest penalty for an early withdrawal, they are not subject to an across-the-board
 9 prohibition on withdrawal.⁵

10 Accordingly, while the Receivership Entities' deposit accounts may or may
 11 not have been so-called CDs, they were still subject to the depositor's right to
 12 withdrawal. See 12 C.F.R. § 229.10; Cal. Comm. Code § 11404. As such, both the
 13 turnover provisions of the Appointment Order (enforced via the Final Turnover
 14 Order) and the Receiver's formal withdrawal request were sufficient to obligate
 15 Celtic Bank to return the funds to the Receiver.

16 **C. The Celtic Bank Loan Documents Support The Receiver's Position.**

17 The Court has requested the parties to address the terms of the loan
 18 documents that are relied upon to support their position. As noted above, the
 19 Receiver first directs the Court to the complete absence of any terms in the loan
 20 documents giving Celtic Bank the right to prohibit or block the withdrawal of
 21 money from the Accounts. Moreover, the loan documents do not contain any terms
 22 that give Celtic Bank a security interest in the money in the Accounts, nor any rights
 23 to money after it is withdrawn from the Accounts. The loan documents solely grant
 24 Celtic Bank a "security interest" in a single "Account" (account no. XXXX2962),
 25 not the money in the Account, as follows:

26

27

28 ⁵ See, e.g., Ken Tumin, A CD's Hidden Attribute: The Early Withdrawal Penalty,
<https://www.depositaccounts.com/blog/early-withdrawal-penalties.html>.

1 **"Assignment.** For valuable consideration, Grantor
2 assigns and grants to Lender a security interest in the
3 Collateral . . .

4 **Collateral Description.** The word 'Collateral'
5 means the following deposit account . . ."

6 See Receiver's Submission of Loan Documents Requested by The
7 Court re: Supplemental Briefing, Exhibits 4 and 8, Assignment of
8 Deposit Account.

9 No mention is made in any document of any prohibition against the
10 withdrawal of money. Likewise, that the foregoing Assignment Agreements only
11 pertain to one of the two Accounts bears repeated emphasis. As such, were the
12 Court to find that the Assignment Agreements are relevant to the scope of Celtic
13 Bank's claims, they are only applicable to one of the two Accounts.

14 Finally, the Receiver cannot advise the Court as to Celtic Bank's specific
15 underwriting decisions, such as why the bank accepted two short-term deposit
16 accounts as collateral for a 25 year loan or what value was placed upon the land
17 constituting the Fontana Property. The Receiver can only assume that, since the
18 bank was responsible for disbursing the loan proceeds for the construction project in
19 the form of progress payments, it was comfortable that the value of the real property
20 was equivalent to the loan proceeds that were disbursed. Consistent with this, Celtic
21 Bank decided to "credit bid" its deed of trust at the foreclosure sale on the Fontana
22 Property and ended up as the owner of the real property collateral.

23 **D. The Receiver's Claims And Distribution Recommendations Should**
24 **Be Approved And Authorized.**

25 Although not addressed in detail at the November 13, 2017 hearing on the
26 Receiver's Omnibus Claims Motion and Objection to Celtic Claim, the Receiver
27 reaffirms his request that – with respect to all claims against the Receivership
28

1 Entities save the Celtic Bank claim (addressed above) – the Court adopt the
2 Receiver's recommended treatment of claims and authorize his recommended
3 distribution on allowed claims, as requested in the Omnibus Claims Motion [Dkt.
4 Nos. 189-190]. No interested parties, other than Celtic Bank, have opposed the
5 Omnibus Claims Motion and the Receiver believes the recommendations included
6 therein reflect the most equitable and appropriate means of treating claimants.

7 **III. CONCLUSION.**

8 For the foregoing reasons, and as presented in the Receiver's Omnibus Claims
9 Motion and Objection to the Celtic Claim, and all supporting previously submitted
10 to the Court, the Receiver respectfully submits that the Court should adopt and
11 approve the Receiver's recommended treatment of claims, including a denial of the
12 Celtic Bank claim, and authorize his recommended distribution on allowed claims.

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14 Dated: November 22, 2017

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17 By: /s/ David R. Zaro

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PROOF OF SERVICE

Securities and Exchange Commission v. Robert Yang, Suncor Fontana, et al.
USDC, Central District of California – Case No. 5:15-cv-02387-SVW (KKx)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

**SUPPLEMENTAL BRIEF OF RECEIVER IN SUPPORT OF:
(1) OMNIBUS MOTION FOR ORDER APPROVING RECEIVER'S
RECOMMENDED TREATMENT OF CLAIMS [Dkt. Nos. 189-190]; AND
(2) SPECIFIC OBJECTION TO PROOF OF CLAIM OF CELTIC BANK
[Dkt No. 191]**

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **November 22, 2017**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On November 22, 2017, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit. Or, I deposited in a box or other facility regularly maintained by FedEx, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelopes or packages designated by the express service carrier, addressed as indicated above on the above-mentioned date, with fees for overnight delivery paid or provided for.

Franchise Tax Board (FTB)
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Via U.S. Mail

Internal Revenue Service
880 Front Street
San Diego, CA 92101-8869

Via U.S. Mail

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 22, 2017 at Los Angeles, California.

/s/ Martha Diaz

Martha Diaz