

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 07/24/2020

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: Johnell Gallivan CSR# 10505

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2019-00049151-CU-MC-CTL** CASE INIT.DATE: 09/09/2019

CASE TITLE: **People of the State of California vs Silver Saddle Commerical Development LP**

[IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Carlos Novelo, Antonio Garcia

CAUSAL DOCUMENT/DATE FILED: Motion for Leave to Intervene, 06/04/2020

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: People of the State of California by and through the Commissioner of Business Oversight

CAUSAL DOCUMENT/DATE FILED: Motion for Preliminary Injunction, 05/26/2020

APPEARANCES

Robert Lux, counsel, present for Plaintiff(s) telephonically.

Arsova Boryana, Plaintiff, present telephonically.

Nicolas Morgan, counsel, present for Defendant(s) telephonically.

Jonah A Toleno, counsel, present for Defendant(s) telephonically.

Mark T Hiraide, counsel, present for Defendant(s) telephonically.

Brian Kaewert, Defendant, present telephonically.

Nicolas Morgan, Defendant, present telephonically.

Edward Chang, counsel for Receiver Thomas McNamara, present telephonically.

Thomas Balames, Representative for SS Purchco LLC, appears telephonically.

Antonio Garcia and Carlos Novelo, Interested parties appear telephonically.

Due to the COVID-19 pandemic, this hearing will be conducted remotely. Absent an order of the court, personal appearances at the hearing will not be allowed. For information on arranging telephonic or video appearances, contact CourtCall at (888)882-6878, or at www.courtcall.com.

The Court hears oral argument and confirms in part/under submission in part the tentative ruling as follows: The Motion (ROA # 136) of Plaintiff People of the State of California ("Plaintiff") for a preliminary injunction to enjoin or cease any and all collection and receipt of funds from Galileo Project investors by Defendants Accelerated Assets, LLC ("Accelerated Assets"), SS Purchco, LLC ("SS Purchco") and

Pahrump Valley Real Estate Co., LLC ("Pahrump RE") (collectively "A.A. Defendants"), is GRANTED.

Defendants ACCELERATED ASSETS, LLC, SS PURCHCO, LLC and PAHRUMP VALLEY REAL ESTATE CO., LLC are enjoined from further specified business activities, as set forth within the proposed order filed with the Court. Plaintiff has satisfied its burden of demonstrating a likelihood of prevailing. The balance of harms favors the need to protect the existing investors. This preliminary injunction preserves the status quo in that the investors will no longer be required to submit payments to Defendants.

"Whenever it appears to the commissioner that any person has engaged, or is about to engage, in any act or practice constituting a violation of any provision of this law ..., the commissioner may in his or her discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with this law Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or other ancillary relief may be granted as appropriate." Corp. Code 29540(a). In addition, Corporations Code section 25530(a) states nearly identical language. Where an injunction is authorized by statute it is not necessary to allege or prove the existence of the usual equitable grounds for the issuance of an injunction. Porter v. Fiske (1946) 74 Cal. App. 2d 332, 338. It is sufficient that the statutory conditions are satisfied. Id. "Where a governmental entity seeking to enjoin the alleged violation of an ordinance which specifically provides for injunctive relief establishes that it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to Defendant. If Defendant shows that it would suffer grave or irreparable harm from the issuance of the preliminary injunction, the Court must then examine the relative actual harms to the parties." IT Corp. v. County of Imperial (1983) 35 Cal. 3d 63, 72.

This Court's October 2019 ruling and order (ROA #s 62 and 66) found that Plaintiff is likely to succeed on the merits of this action such that a preliminary injunction and appointment of a receiver were permissible. In addition, Corporations Code section 25403(b) provides: "Any person that knowingly provides substantial assistance to another person in violation of any provision of this division or any rule or order thereunder shall be deemed to be in violation of that provision, rule, or order to the same extent as the person to whom the assistance was provided." An enforcement action to enjoin future sales by means of false or misleading statements is designed to protect the public. People v. Simon (1995) 9 Cal. 4th 493, 515. As a result, it is irrelevant that Defendant knows that the statements or omissions are false or misleading. Id. 515, 516. The Legislature did not intend to permit members of the public to be harmed by such sales simply because the offeror was unaware that his or her sales pitch was misleading. Id. at 516. Payments made subsequent to an initial fraud, but made on the basis of the initial fraud, are distinct and continuing violations of law. See People v. Frankfort (1952) 114 Cal. App. 2d 680, 702.

The issue presented by this Motion is whether the previous finding of success on the merits can be extended to Defendants Accelerated Assets, LLC, SS Purchco, LLC and Pahrump Valley Real Estate Co., LLC. Specifically, did these Defendants knowingly provide assistance with respect to commission of the alleged wrongful conduct, or were the purchases of the receivables stemming from Galileo Project investor financing notes merely "arm's length transactions" such that these Defendants are innocent bystanders? Plaintiff has made an adequate showing that these Defendants were not innocent third-parties. They did not purchase the Galileo Project note receivables in arms-length, isolated transactions. Instead, they entered the transactions with knowledge of the scheme. They performed

due diligence such that they were on notice the investments were undercapitalized and overpriced. Thus, a preliminary injunction is proper and these Defendants should not be permitted to continue to accept payments made in response to the misrepresentations.

(Clerk's note: The motion for Preliminary Injunction is under submission.)

The Motion (ROA # 141, 151) of Prospective Intervenors Antonio Garcia and Carlos Novelo to intervene and to file their proposed complaint in intervention in this action, is DENIED.

A necessary prerequisite of a Motion seeking to intervene is the filing of a Complaint in intervention, which is then served on the parties. Sutter Health Uninsured Pricing Cases (2009) 171 Cal. App. 4th 495. The failure to comply with this requirement supports the denial of this Motion. Id. In addition, intervention by the public into a regulatory enforcement action is disfavored. See, e.g. Securities and Exchange Commission v. Everest Management Corp. (1972) 475 F. 2d 1236, 1240 (explaining preference of requiring private parties to commence their own actions rather than have SEC actions bogged down through intervention).

The Court "shall" permit a nonparty to intervene in the action if a provision of law confers an unconditional right to intervene; or the person seeking intervention claims an interest relating to the property or transaction that is the subject of the action, and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties. Code Civ. Proc. 387(d)(1). With respect to the first test, there is no provision of law cited by the prospective intervenors giving them an unconditional right to intervene. With respect to the second test, there is no claim by any investor that they have a specific legal right of ownership to the Silver Saddle Ranch (fractional or otherwise). The Ranch is already under Court control via the receivership, and the Receiver may dispose of the receivership estate only upon Court approval. This procedure allows investors to be heard regarding how the receiver disposes of the receivership estate. The prospective intervenors will not be substantially prejudiced by a judgment rendered in their absence.

A nonparty "may" be permitted to intervene "if the person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both." Id. at (d)(1). The Court has discretion to permit a nonparty to intervene in litigation pending between others, provided: the nonparty has a direct and immediate interest in the litigation; the intervention will not enlarge the issues in the case; and the reasons for intervention outweigh any opposition by the existing parties. Truck Ins. Exchange v. Superior Court (Transco Syndicate No. 1) (1997) 60 Cal. App. 4th 342 346. An interest is insufficient for intervention when the action in which intervention is sought does not directly affect it, although the results of the action may indirectly benefit or harm its owner. Continental Vinyl Products Corp. v. Mead Corp. (1972) 27 Cal. App. 3d 543, 550. For example, an unsecured creditor of a Defendant who will be rendered unable to pay the debt if he loses a lawsuit is held to have only a consequential interest not justifying intervention in the litigation. Id. Also, absent some special circumstance, a shareholder has a consequential but not direct interest in the outcome of litigation involving the corporation. Id. at 553. In this action, the prospective intervenors are indirectly interested in disposition of the receivership estate as individual investors, but they do not have a direct and immediate interest necessitating participation as parties. The prospective intervenors, like all investors, will be afforded an opportunity to be heard

regarding the disposition of the receivership estate through the Receiver's notice and recommendations to the Court. Also, inclusion of the prospective intervenors as parties would enlarge the issues in the case because many of the approximately 3,000 investors have disparate opinions regarding disposition of the receivership estate.

Attorney for the People to serve notice of the Court's ruling.

(Clerk's note: Tentative is confirmed as to Motion to Intervene.)

Joel R. Wohlfeil

Judge Joel R. Wohlfeil