

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SECURITIES AND EXCHANGE	§	
COMMISSION	§	
	§	
Plaintiff,	§	CA. NO. 4:11-CV-02830
	§	
V.	§	
	§	
BRIAN A. BJORK, THE ESTATE OF	§	
JOEL DAVID SALINAS, J. DAVID	§	
GROUP OF COMPANIES, INC., J.	§	
DAVID FINANCIAL GROUP LP,	§	
SELECT ASSET MANAGEMENT LLC,	§	
SELECT ASSET FUND I, LLC, AND	§	
SELECT ASSET PRIME INDEX FUND,	§	
LLC	§	
	§	
Defendants.	§	

JOINT AGREED MOTION TO STAY PROCEEDINGS

TO THE HONORABLE UNITED STATES DISTRICT JUDGE KEITH P. ELLISON:

Gasaway Properties, LP (“Gasaway Properties”) and Richard C. Gasaway (“Gasaway”) (together, the “Gasaway Parties”), and Steven A. Harr, in his capacity as the Court's appointed Receiver in this cause (collectively, the “Parties”) file this Joint Agreed Motion to Stay Proceedings and, in support thereof would respectfully show as follows:

I.

1. On August 1, 2011, the Securities and Exchange Commission ("SEC") filed its Complaint (the “Receivership Action”) against Brian A. Bjork, Estate of Joel David Salinas, J. David Group of Companies, Inc., J. David Financial Group LP, Select Asset Management LLC, Select Capital Management, LLC, Select Asset Fund I, LLC, and Select Asset Prime

Index Fund, LLC (collectively, the "Receivership Entities"). The Receivership Action was docketed as C. A. Number 11-CV-02830 and assigned to this Court for disposition.

2. On August 1, 2011, this Court entered an order appointing Steven A. Harr (the "Receiver") as Receiver of the Receivership Entities [Doc. No. 11].

3. On June 18, 2012 the Gasaway Parties filed suit against the Receiver (the "Gasaway Lawsuit"), which was docketed as C.A. No. 12-CV-01821. Due to inadvertence and apparent miscommunication with the District Clerk's office, this Gasaway Lawsuit was erroneously assigned to Judge Vanessa Gilmore.

4. On June 21, 2012, upon learning that the case had been assigned to the wrong court, and prior to the filing of an answer or other appearance by the Receiver, the Gasaway Parties filed a Notice of Related Case and Motion to Transfer, requesting that Judge Gilmore transfer the Gasaway Lawsuit to this Court, such order being granted on August 7, 2012.

5. On August 21, 2012, the Receiver filed a Motion for Judgment against the Gasaway Parties [Doc. No. 93]. The same day the Receiver filed its Motion to Dismiss the Gasaway Lawsuit without prejudice [Doc. No. 95]

6. On September 6, 2012 the Gasaway Parties filed an Agreed Motion to Extend Time to respond to the Receiver's Motion for Judgment [Doc. No. 97], which this Court granted [Doc. No. 98]. The Motion for Judgment is still pending before the Court.

7. On September 11, 2012 the Gasaway Parties filed a response to the Receiver's Motion to Dismiss [Doc. No. 102]. On September 13, 2012 the Receiver filed his reply [Doc. No. 104]. The Receiver's Motion to Dismiss is still pending before the Court.

8. In order to avoid additional fees and expenses, and in the interest of judicial economy, the Receiver and the Gasaway Parties have agreed to discuss resolution of their dispute without the need for a lawsuit or the Court to consider the pending motions. Additional

time is needed by the Gassaway Parties to investigate their accounting of the transactions in issue. Therefore, the Parties request that the Court stay the proceedings brought by and against the Gasaway Parties for a period of sixty (60) days so the Parties' may discuss settlement.

II.

9. A federal court has the inherent power to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Itel Corp. v. M/S Victoria U. (Ex Pishtaz Iran)*, 710 F.2d 199, 203 (5th Cir. 1983) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 166, 81 L. Ed. 153 (1936)). Such questions of docket management are left to the sound discretion of the district court, and it is the district court's responsibility to weigh the competing interests of the parties relating to the appropriateness of a stay. *Landis*, 299 U.S. at 254-55.

10. Here, the Parties agree that a stay is desirable and appropriate both to facilitate potential settlement, to promote judicial economy, and reduce the costs of litigation. The parties have voluntarily exchanged information, much of it requiring forensic accounting assistance to review. In addition, Mr. Gasaway is seeking to obtain additional documentation that will aid both sides in evaluating their relative positions in this case. Thus, the Parties respectfully and jointly move that this Court stay all further proceedings by and against the Gasaway Parties in Cause Numbers 4:11-CV-02830 and 12-CV-01821 for a period of sixty (60) days.

III.

11. In light of the foregoing authority, this Court has the discretion in the interests of justice and equity to stay all proceedings related to the Gasaway Parties for the period requested herein.

12. This Joint Agreed Motion is not presented for purposes of delay, but only so that justice may be done. Economy considerations apply to the Parties and this Court, and granting this Joint Agreed Motion in accordance with the proposed order attached hereto will not prejudice any party, will not unduly delay the progress of this action, and will serve the interests of justice and equity.

WHEREFORE, PREMISES CONSIDERED, Gasaway Properties, LP, Richard C. Gasaway, and Steven A. Harr in his capacity as Receiver, respectfully request that this Court enter the attached proposed order granting the Parties' request that all proceedings herein be stayed for a period of sixty (60) days from the signing of such order.

Respectfully submitted,

JOHNSON DELUCA KURISKY & GOULD
A Professional Corporation

By: /s/ Millard A. Johnson

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THE RECEIVER AND HIS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that on October 2nd, 2012, a true and correct copy of the foregoing pleading was served by electronic noticing on those parties entering appearances in the referenced proceeding.

/s/ Millard A. Johnson
Millard A. Johnson