

In the United States District Court
for the Southern District of Texas
Houston Division

THOMAS L. TAYLOR, III, etc..)	
et al.)	
)	
Plaintiffs)	
)	
v.)	Civil Action No. 4:12-cv-01491
)	
DANIEL S. FRISHBERG, et al.)	
)	
Defendants)	
)	

**DECLARATION IN FURTHER SUPPORT OF APPLICATION PURSUANT TO
F.R. CIV. P. RULE 56 (D) TO PERMIT DEPOSITION OF RECEIVER PRIOR TO
DETERMINATION OF PLAINTIFF’S SUMMARY JUDGMENT MOTION**

Aaron David Frishberg declares under penalties of perjury pursuant to federal law as follows:

I make this Declaration to amplify two issues to the Court regarding the Defendants’ assertion that Thomas L. Taylor, III should be deposed prior to the determination of the Receiver’s motion for summary judgment first, the reasons why the testimony of the Receiver would address liability as well as damages, and second, why the delay in raising this issue to the Court was under the circumstances excusable.

BizRadio Liability

With respect to the issue of liability, the Plaintiff’s contentions include assertions that the management of Frishberg, Jordan and Kaleta and of BizRadio by Daniel Frishberg was carried out in a negligent manner.

The Receiver has asserted that BizRadio was mismanaged in that it was not

and could not be made solvent. The Receiver has presented balance sheets of BizRadio, and asserted that these records show that BizRadio was not, and could not be made profitable. To the extent that the Receiver's inferences concerning the allegedly apparent insolvency are not supported by elucidation of how this conclusion is supported by the documents, there is no prejudice at this point to the Defendants in allowing the absence of such an elucidation to speak for itself, in this Court's determination of the motion.

However, the Receiver was personally involved in blocking the exchange of the BizRadio equipment to Salem Radio for eight-hundred thousand dollars in operating funds, and approximately 1.2 million dollars in new market airtime. The Receiver and his counsel have responded to requests to depose the Receiver on this subject by stating that the Receiver had resolved to not permit the fraud to continue.

Insofar as all start-up businesses have a period of operating at a loss, which is not the same as being fraudulent, or even not financially viable, it could be critical to the defense to test the Receiver's conclusion that BizRadio was insolvent, and could not be made a financially successful operation, before he sold the same equipment for a total of one-million dollars, without any additional markets.

This is critical to the defense because the Receiver's theory of liability with respect to BizRadio is that Daniel Frishberg's mismanagement caused BizRadio not to be financially viable. There is an alternative scenario, that the Receiver rejected a viable deal, without which the company could not, by expanding into new markets and linking its radio network to the handling of investor capital by Daniel Frishberg Financial Services, and by his self-fulfilling prophecy guaranteed that BizRadio would

not realize more than the one-million dollars for which the equipment was sold to Salem.

The critical element of causation is a part of showing liability. It is respectfully submitted that the Receiver's allegation of liability on the part of Daniel Frishberg for BizRadio's losses is subject to challenge based on information within the control of the Receiver, beyond what may be inferred from the financial records of Biz Radio. In addition, the production in 2013 of records of BizRadio does not establish, without testimony, to what extent, if at all, these records had been examined by the Receiver and what meaning he ascribed to them years earlier.

Liability for DFFS

Likewise, when the notes issued by Kaleta Capital Management had proven worthless to the noteholders, Daniel Frishberg proposed to exchange those notes for shares in Daniel Frishberg Financial Services. The SEC did not object to this arrangement, but directed Daniel Frishberg that it would have to be approved by Thomas Taylor, III. Only if Daniel Frishberg was unable to satisfy the noteholders would the SEC make Daniel Frishberg Financial Services a relief defendant.

The Receiver did not approve this transaction, which resulted in the inability of Daniel Frishberg to retire the KCM notes, and to DFFS being made a relief defendant. This, in turn, led to the loss of the custodian of the funds under management by DFFS, without which it could not continue to service its clients.

The role of the Receiver in preventing this resolution is thus directly tied to the asserted liability of DFFS to its investors, whom the Receiver asserts have claims against DFFS which give rise to claims by DFFS as a relief defendant against Daniel

Frishberg. Because of the Receiver's direct involvement in these events, an alternative scenario should be available by exploring the Receiver's explanation of his conduct and alleged reasons for it in this respect.

Excusable Delay

After over a year of providing virtually no response to Defendants document requests, approximately one month before the close of discovery, the Receiver produced two flash drives containing an enormous quantify of documents.

Up to that time, the discussions with the Receiver's counsel had never reached a definitive impasse, with the Receiver refusing to be deposed. However, his counsel had challenged the undersigned to explain what personal knowledge the Receiver might have. The production of these additional documents left open the possibility that they could either make the deposition of the Receiver unnecessary, or that there would be evidence in the documents which would support the need for the deposition.

Submitted with this declaration as an Exhibit is a list of the documents produced on the two flash drives. It is respectfully submitted that the sheer volume of documents, together with the very short extension to which the Receiver was willing to acquiesce for the submission of a response to the motion for summary judgment when the undersigned requested one because of my scheduled travel to a law conference in San Juan, Puerto Rico, made it virtually impossible to digest these documents and, when attempts to arrange for the deposition of the Receiver were unavailing, raise it to the Court at an earlier date, with consideration of these documents brought to bear on the issue.

Respectfully submitted,

/s/

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**Dated: New York, NY
Dec. 18, 2013**