

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

Thomas L. Taylor III, solely in his
capacity as Court-appointed Receiver for
Kaleta Capital Management, Inc., *et al.*,

Plaintiff,

v.

David G. Wallace, Costa Bajjali, Laffer
Frishberg Wallace Economic Opportunity
Fund, L.P. d/b/a LFW Economic
Opportunity Fund, and West Houston
WB Realty Fund, L.P.,

Defendants.

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Civil Action No. 4:15-cv-272

RECEIVER'S STATUS REPORT

Plaintiff Thomas L. Taylor III (the "Receiver"), solely in his capacity as Court-appointed Receiver in the civil action styled *SEC v. Kaleta, et al.*, Civil Action No. 4:09-cv-3674 (S.D. Tex. 2009) (the "Enforcement Action") (EA Doc. #), respectfully files the following Status Report pursuant to this Court's Order of April 21, 2015 [Doc. # 27].¹

A. Background

In his Complaint, the Receiver asserted causes of action for breach of contract against Defendants West Houston WB Realty Fund, L.P. ("West Houston Fund") and

¹ "It is further **ORDERED** that the Plaintiff and Court-Appointed Receiver Thomas L. Taylor, III shall file a written status report on **June 1, 2015**, and every six (6) months thereafter until this civil case is either dismissed or reinstated." *Id.* at 2.

Laffer Frishberg Wallace Economic Opportunity Fund, L.P. (“LFW Fund”) with respect to certain “Replacement Notes” executed pursuant to a Court-approved settlement agreement between the Receiver and several “Wallace Bajjali Parties”. EA Docs. # 113-1, 170, 210. Payment on the Replacement Notes was due by December 31, 2014, but no payments were ever made by the West Houston or LFW Funds.

The Receiver also asserted causes of action for breach of contract against Defendants David G. Wallace, Jr. (“Wallace”) and Costa Bajjali (“Bajjali”) with respect to certain “Guaranty Agreements” executed by them pursuant to the settlement agreement which guaranteed payment of the amounts owed by West Houston Fund and LFW Fund under the Replacement Notes. Pursuant to the Guaranty Agreements, upon the default of West Houston Fund and LFW Fund, Wallace and Bajjali had 10 days following written demand to pay the amounts owed under the Replacement Notes to the Receivership Estate. They failed to do so.

LFW Fund and West Houston Fund failed to answer or otherwise defend against the Receiver’s Complaint. Accordingly, the Receiver filed Requests for the Entry of the Defaults of the Note Entities, which defaults were entered by the Court on March 16, 2015. Doc. # 17. A Final Default Judgment for \$541,431.21 was entered against LFW Fund on April 2, 2015. Doc. # 23.

Wallace and Bajjali answered the Receiver’s Complaint on February 13 and 20, 2015, respectively. Docs. # 5, 14. The Receiver moved for summary judgment against Wallace and Bajjali on March 9, 2015. Docs. # 15, 16. The Court entered a Memorandum

and Order granting summary judgment against Bajjali on April 17, 2015, Doc. # 24, and entered a Final Judgment for \$1,536,271.39 against Bajjali on April 21, 2015. Doc. # 26.

Judgments were not entered against Wallace and West Houston Fund, however, because on March 24 and April 2, 2015, respectively, they filed voluntary petitions under Chapter 7 of title 11, of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (Case Nos. 15-31594-H4-7 and 15-31773-H5-7, respectively). The Receiver has engaged Joseph G. Epstein of Winstead PC as bankruptcy counsel for the Receivership Estate with respect to the Wallace and West Houston Fund bankruptcy cases, and other related bankruptcy cases filed by Wallace Bajjali-affiliated entities.

B. Wallace and West Houston Fund Bankruptcy Cases

1. Wallace Chapter 7 Bankruptcy Case

Rodney Tow has been appointed Chapter 7 Trustee of Wallace’s Chapter 7 Bankruptcy Estate. On May 5, 2015, the Receiver and Mr. Epstein attended the Meeting of Creditors for debtor Wallace, at which counsel for the Chapter 7 Trustee and creditors questioned Wallace on the record with respect to his bankruptcy schedules and statement of financial affairs. The Chapter 7 Trustee concluded the Creditors’ Meeting and has determined that the case has potential assets and provided notice that creditors must file proofs of claim on or before February 1, 2016. The Receiver filed a Proof of Claim in the Wallace Bankruptcy on October 13, 2015 in the amount of \$1,551,580.81 as an unsecured claim.

Pursuant to the Federal Rules of Bankruptcy Procedure, the deadline for the Chapter 7 Trustee, creditors, or other parties in interest to commence adversary proceedings to challenge the dischargeability of a particular debt, or to deny Wallace's right to receive a discharge from bankruptcy, was set for June 22, 2015. Following several motions by the Chapter 7 Trustee and other creditors, including the Receiver, this deadline was ultimately extended to September 30, 2015.

On July 22, 2015 the Chapter 7 Trustee noticed the Bankr. Rule 2004 Examination of Wallace with respect to the assets and liabilities of two trusts in the name of his children, his interests in the various Wallace/Bajjali entities -- many of which are in bankruptcy -- and other matters related to his financial affairs. Following this notice, the Chapter 7 Trustee obtained documents from Wallace and certain related entities, including his children's trusts, which were made available for inspection by Receiver's counsel on or about August 24, 2015.

On or about September 3, 2015, counsel for the Chapter 7 Trustee informed the Receiver that, based upon a review of produced documents and conversations with the debtor and his counsel, they had determined not to depose Wallace. Counsel for certain of Wallace's creditors, C. Thomas Schmidt, agreed to pursue discovery separate and apart from the Chapter 7 Trustee and conduct the Rule 2004 Examination as originally noticed and scheduled by the Chapter 7 Trustee. Counsel for the Receiver attended the Rule 2004 Examination on September 21, 2015.

On September 24, 2015, this Court conducted a hearing with respect to certain objecting investors' Motion to Modify the Court's Bar Order [EA Doc. # 286] (*see*

discussion *infra*). As represented to the Court at that hearing, counsel for the Receiver conducted a thorough examination of documents in the Wallace Chapter 7 Trustee's possession, and compared relevant documents from this examination (and additional documents otherwise filed in or obtained from the bankruptcies of Wallace and related Wallace/Bajjali entities) to the confidential disclosures made to the Receiver by Wallace during the 2011 settlement negotiations in the Enforcement Action. The Receiver and his counsel ultimately determined that grounds did not exist to pursue an adversary proceeding to declare the amounts guaranteed by Wallace for the "Replacement Notes" nondischargeable, or otherwise to challenge the discharge of Wallace in his bankruptcy case.

2. West Houston Fund Bankruptcy

Lowell Cage was appointed Chapter 7 Trustee of the West Houston Fund bankruptcy estate. On May 21, 2015, the Trustee conducted the Meeting of Creditors. The Trustee concluded the Creditors' Meeting and determined that potential assets may exist to pay a dividend to creditors. On May 22, 2015, the Bankruptcy Court in the case styled *In re Porter Development Partners, LLC*, Case No. 15-31305-H5-7, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, entered an Order for Joint Administration and Transfer of Cases with respect to the joint administration of the bankruptcy estates of West Houston Fund and 20 related Wallace-Bajjali entities (Doc. # 19 therein), including WB Real Estate Holdings, LLC (the "Holding Company"). Based upon asset schedules and other documents obtained in the bankruptcy cases of Wallace and West Houston Fund, and confirmed by Bajjali at

deposition (*see* §C, *infra*), West Houston Fund's material assets consist of ownership interests in the Holding Company, which in turn owns certain special purpose subsidiary entities holding real property assets. The Receiver filed a proof of claim in the West Houston Fund bankruptcy case on October 13, 2015 in the amount of \$1,020,257.09 as an unsecured claim.

On November 12, 2015, the Chapter 7 Trustee who is administering the West Houston Fund Chapter 7 Bankruptcy Case filed his "Trustee's Status Report," which generally describes the procedural and factual background of the jointly administered debtors' bankruptcy cases in *In re Porter Development Partners, LLC* (See Doc. # 56 therein). The Trustee continues to determine the assets and liabilities of the jointly administered debtors. The Receiver and his counsel will continue to monitor the sale of real estate owned by West Houston Fund (derivatively, through the Holding Company and its subsidiaries) in the jointly administered bankruptcy cases. The sale of the underlying real estate assets of the Holding Company represent the best prospect for recovery upon the Receiver's claims against West Houston Fund.

C. Judgments Against Defendants Costa Bajjali and LFW Fund

On April 2, 2015, this Court entered a Final Default Judgment against Defendant LFW Fund in the amount of \$541,431.21. Doc. # 23. On April 21, 2015, this Court entered a Final Summary Judgment against Defendant Bajjali for \$1,536,271.39. Doc. # 26.

The Receiver has filed in the Official Public Records of Fort Bend County, Texas an Abstract of Judgment with respect to the Bajjali Judgment. On September 17, 2015

counsel for the Receiver conducted the deposition of Bajjali in aid of the Bajjali Judgment. Based upon the information obtained through discovery, there is no current prospect for collection on the Bajjali Judgment -- although it remains an asset of the Receivership Estate should Mr. Bajjali's financial condition improve in the future.

Based upon asset schedules and other documents obtained in the bankruptcy cases of Wallace and West Houston Fund, and confirmed by Bajjali at deposition, LFW Fund's material assets, like those of West Houston Fund, consist of ownership interests in the Holding Company (which owns real estate assets through various subsidiaries). The Receiver and bankruptcy counsel continue to monitor the bankruptcies of the Holding Company and related entities with respect to the interests of LFW Fund (and any derivative benefit through those interests in the real property owned by the subsidiaries of the Holding Company). The sale of the underlying real estate assets of the Holding Company presents the best prospect for payment upon the Receiver's judgment against LFW Fund.

D. Objecting Investors Request to Modify Bar Order

On May 22, 2015, certain objecting investors who purchased debt instruments of Receivership Entity BizRadio through certain Wallace Bajjali-related entities (the "BusinessRadio Note Holders") filed in the Wallace Chapter 7 bankruptcy case an Emergency Motion to Lift Stay to Seek Relief and Clarification of Judge Atlas's Order Approving Settlement and Entering Final Bar Order and Injunction in Federal District Court Action [Doc. # 40 therein]. The BusinessRadio Note Holders (or certain of them) are the same parties which opposed this Court's approval of the Receiver's settlement

agreement with the Wallace Bajjali Parties, and subsequently appealed this Court's Final Claim Bar Order [EA Doc. # 210] ("Bar Order") entered with respect to claims arising from the purchase of BusinessRadio promissory notes.² The BusinessRadio Note Holders sought to lift the injunction contained in the Bar Order so that they might pursue their BusinessRadio Note claims against Wallace in his bankruptcy case and against others in state court litigation.³ The Receiver opposed the relief ultimately sought by the BusinessRadio Note Holders, but did not oppose the lifting of the Stay to proceed before this Court. The Bankruptcy Court entered an Agreed Order Lifting the Stay on June 9, 2015 (Doc. # 60 therein).

Approximately 12 weeks after obtaining the relief sought from the Bankruptcy Court, on August 31, 2015 the BusinessRadio Note Holders filed with this Court a Motion to Modify Court's Bar Order and Request for Expedited Oral Hearing. EA Doc. # 286. Responses by the Receiver (EA Doc. #290) and Wallace (EA Doc. #289) were filed on September 17, 2015. On September 24, 2015, Replies were filed by the BusinessRadio Note Holders (EA Docs. # 291, 292) and the matter was heard before this Court. EA Doc. # 293. On September 29, 2015, this Court entered a Memorandum and Order denying Motion to Modify Court's Bar Order (Doc. #294).

² The Order approving the settlement agreement and the Bar Order each were upheld on appeal by the U.S. Court of Appeals for the Fifth Circuit. *SEC v. Kaleta*, 530 Fed. Appx. 360, 2013 U.S. App. LEXIS 12471, 2013 WL 3030300 (5th Cir. 2013).

³ *Ellisor et al. v. Wallace, et al.*, Cause No. 2012-01447, 270th Judicial District Court of Harris County, Texas ("*Ellisor v. Wallace*").

E. Status of State and Bankruptcy Court Actions by Receivership Claimants

As previously reported to the Court, certain parties, including the BusinessRadio Note Holders, filed the *Ellisor v. Wallace* state court action against Wallace, Frishberg, Bajjali and others with respect to various investments in BizRadio, LFW Fund, West Houston Fund, and other Wallace/Bajjali entities. No action has been taken by the Plaintiffs therein since this Court's Status Conferences of March 24 and April 2, 2015. EA Docs. # 276, 282. A status conference in *Ellisor v. Wallace* has been set for December 4, 2015.

On September 30, 2015 the Plaintiffs in *Ellisor v. Wallace* filed an adversary action against Wallace in his Bankruptcy case.⁴ *Ellisor, et al. v. Wallace*, No. 4:15-ap-03241 (Bankr. S.D. Tex. 2015). They challenge the dischargeability of certain debts of Wallace to them pursuant to 11 USC §§ 523(a)(2)(A) ("False pretenses, a false representation, or actual fraud"), 523(a)(4) ("fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny"), and 523(a)(19) (violation of Federal or state securities laws or common law fraud in the sale of securities).

⁴ Four additional adversary cases also have been filed in the Wallace bankruptcy case.

Dated: December 1, 2015

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

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COUNSEL FOR RECEIVER

CERTIFICATE OF SERVICE

On December 1, 2015, I served the foregoing document on all remaining parties pursuant to the Federal Rule of Civil Procedure as listed below.

CM/ECF Electronic Notice:

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