

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES)	
AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Cause No. 1-15-cv-00659-JMS-MJD
)	
v.)	
)	
VEROS PARTNERS, INC.)	
MATTHEW D. HAAB,)	
JEFFERY B. RISINGER,)	
VEROS FARM LOAN HOLDING LLC,)	
TOBIN J. SENEFELD,)	
FARM GROWCAP LLC, and)	
PINCAP LLC,)	

**REPLY IN SUPPORT OF
VEROS PARTNERS, INC.’S MOTION TO MODIFY
PRELIMINARY INJUNCTION**

Introduction

Veros Partners, Inc. owes MainSource Bank over \$600,000.00. Its debt to MainSource is a first-priority secured debt, and Veros Partners must pay this debt in full by November 18, 2015—just over 90 days from now. These facts are undisputed.

Veros Partners has a limited-time opportunity to sell rapidly diminishing assets to two buyers for a total of \$310,000.00 in cash, and it wants to apply 100 percent of the gross proceeds from those sales toward a substantial reduction of its secured debt to MainSource. Indeed, no other application of the sales proceeds would be possible because the assets in question all are encumbered by MainSource’s security interest. These facts are also undisputed.

Even with MainSource's consent, Veros Partners could not complete the planned asset sales without relief from the preliminary injunction in place in this lawsuit brought by the Securities and Exchange Commission (the "SEC"). Therefore, as mentioned in Veros' motion and as discussed in greater detail in the SEC's response in opposition to that motion, Veros Partners has been in negotiations for the past several weeks with both MainSource and the SEC in hopes of reaching a settlement that would allow the parties to present an agreed motion to the Court for a modification of the preliminary injunction that would permit the transaction to proceed.

As the Court is now aware from the SEC's response, those negotiations were unsuccessful because the SEC demanded a substantial portion of the sales proceeds in exchange for its agreement that the sales could proceed. At the same time, MainSource was unwilling to release its security interest in the assets being sold unless *it* received most of the sales proceeds. Because Veros Partners was unable to broker an agreement between the SEC and MainSource, Veros Partners filed its motion seeking the Court's intervention.

The real issue before the Court is not whether the proposed sale transactions should proceed. Everyone involved wants the sales to proceed. At the risk of being blunt, the only real issue is who gets the money—MainSource or the SEC. Put another way, the SEC's objection may be summarized as follows: The proposed sale transactions are perfectly reasonable, but only if the SEC gets most of the sales

proceeds despite MainSource's security interest. Otherwise, the transaction itself is improper and therefore objectionable to the SEC.

For the reasons that follow, the Court should grant the motion over the SEC's objection.

A. The Terms of the Planned Transaction Were Fully Disclosed.

These transactions were not negotiated in secret. From the outset, the parties knew that the planned sales involved assets that were subject to both MainSource's security interest and the Court's asset freeze. Therefore, Veros Partners began discussions with the SEC, the Receiver, and MainSource in late June about the planned transactions.

The SEC and the Receiver have known for over a month which assets were being sold and for how much, and that the transactions in question are sales to insiders. Indeed, the SEC and the Receiver have been aware from the outset that Adam Decker and Amber Banks are terminating their relationships with Veros Partners and have formed companies that wish to purchase certain of its assets as they launch their own business ventures. Neither the SEC nor the Receiver ever objected to any of these terms of the planned transaction.

The SEC and the Receiver also have known since the outset that Adam Decker and Matthew Haab personally guaranteed Veros Partners' debt to MainSource, and that the planned transaction would have the collateral effect of reducing Mr. Decker's and Mr. Haab's contingent liabilities to MainSource to the

extent that Veros Partners' debt to MainSource is retired. Neither the SEC nor the Receiver ever objected that these guarantees would be affected by the planned transaction.

None of these facts are in dispute and none of them were withheld from the SEC or the Receiver. More importantly, none of them inform the question of whether the transaction should be allowed to go forward. Indeed, if the SEC and MainSource could have agreed on how to divide the proceeds of the the transaction, then the SEC would not be asserting any of its presently stated concerns about its terms. The SEC's *only* consistent objection to the transaction has been, and remains, that Veros Partners intends to use the sales proceeds in the only way that the law allows Veros Partners to use them—to pay down its secured debt to MainSource. In the SEC's own words, “[t]he SEC will not consent to the proposed transaction unless the payout structure is modified so that Veros’ investors can receive a significant portion of the proceeds.” (Response Brief at 4.) Put simply, the SEC's objection is not a legal challenge to the transaction itself, but rather a bargaining maneuver.

The SEC's suggestion that Veros Partners has withheld information about the transaction therefore rings hollow. Indeed, not until its August 7 objection to Veros Partners' motion did the SEC ever complain about the fact that the buyers were insiders, nor did the SEC ever complain that the purchase price was unreasonable, nor that the transaction might not bring sufficient value for the assets being sold.

B. The Transactions Are in the Best Interest of Veros Partners' Creditors.

The SEC argues that Veros Partners has failed to demonstrate that the proposed transactions are in its creditors' best interests. The SEC is mistaken. Indeed, the transactions are specifically structured to benefit Veros Partners' creditors, including the investors in question. With all due respect to the SEC, its position in opposition to the motion is akin to "cutting off its nose to spite its face." Particularly, the SEC's response completely ignores several critical undisputed facts about the planned transactions:

First, *Veros Partners must pay MainSource over \$600,000.00 by November 18*. Otherwise, Veros Partners will default on its secured debt to MainSource and the company will quickly be out of business. This result would be catastrophic for all of Veros Partners' creditors, including the investors whose interests the SEC seeks to protect. The proposed transactions instantly reduce Veros Partners' debt to MainSource by half. Every dollar that is realized from the planned transactions and paid to MainSource is a dollar that Veros Partners need not raise through operations or from other sources over the next 90 days to make a November balloon payment, substantially easing Veros Partners' cashflow burden for the rest of 2015. This means that an additional \$310,000.00 of Veros Partners' revenue can be used (under the scrutiny of the Court, the SEC, and the Receiver) to fund operations and to repay investors, instead of being applied toward a mandatory balloon payment in November to MainSource.

Second, *Veros Partners' only option is to pay MainSource*. Because the sales proceeds from the planned transactions are not sufficient to completely retire Veros Partners' debt to MainSource, MainSource has an absolute veto right on these transactions. Unless MainSource agrees to a partial lien release while it is still owed money by Veros Partners, the transaction cannot close.

There is no legal basis for Veros Partners, the SEC, the Receiver, or the Court to require MainSource to accept less than 100 percent of the sales proceeds in exchange for an agreement to partially release its lien on the assets at issue. Put another way, Veros Partners is unaware of any authority that would allow the Court to allocate the proceeds from the planned transaction between the SEC and MainSource. If Veros Partners' motion is denied, and MainSource refuses to release its security interest, then the deals will be dead and *none* of Veros Partners' creditors will benefit at all.

Third, *the assets being sold in these transactions are rapidly dissipating*. As initially set forth in Veros Partners' motion, the client relationships that are the heart of both transactions are, essentially, at-will relationships between Veros Partners and its consulting clients. In light of this litigation and the media attention it has received, Veros fears that these consulting clients will leave of their own accord if the transactions are not closed soon, leading Trueblaze and/or Banks to withdraw their offers (which both of them have a contractual right to do at this point). The SEC does not dispute any of these facts. If the clients leave and the purchasers' offers are withdrawn, any value to be realized from these proposed

transactions will simply disappear, benefiting neither the SEC, nor any investors, nor MainSource.

Finally, and significantly, the Receiver did not object to Veros Partners' present motion, suggesting strongly that the Receiver consents to Veros Partners' request to enter into the transactions and apply the proceeds to pay down its secured debt to MainSource.

In its response, the SEC cites *SEC v. Dobbins*, 2014 WL 957715 at *2 (N.D. Tex. April 14, 2014) for the proposition that the Court "has a duty to ensure that Defendants' assets are available to make restitution to the alleged victims." (Response Brief at 6). For all of the foregoing reasons, Veros Partners respectfully submits that the best way by far for the Court to fulfill this duty is to grant the present motion. Any other outcome would simply allow \$310,000.00 to slip away from Veros Partners' creditors, who would receive absolutely nothing in return.

WHEREFORE, Defendant Veros Partners, Inc. moves for an Order modifying the Court's preliminary injunction to allow the planned sales transactions to close and to allow Veros Partners to apply the sales proceeds toward its debt to MainSource, together with all other just and proper relief.

Respectfully submitted,

/s/ F. Anthony Paganelli

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Counsel for Veros Partners, Inc.

CERTIFICATE OF SERVICE

I certify that on August 11, 2015, the foregoing document was filed using the Court's CM/ECF system, which will serve notice upon the following counsel of record:

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