

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
VEROS PARTNERS, INC.,)
MATTHEW D. HAAB,)
JEFFERY B. RISINGER,)
VEROS FARM LOAN HOLDING LLC,)
TOBEV J. SENEFELD,)
FARMGROWCAP LLC,)
PINCAP LLC,)
)
Defendants,)
)
PIN FINANCIAL LLC,)
)
Relief Defendant.)

Case No. 15-cv-659-JMS-MJD

MAINSOURCE BANK’S EMERGENCY MOTION TO INTERVENE

MainSource Bank (“MainSource”), by counsel, moves the Court to allow MainSource to intervene in this action pursuant to Federal Rule of Civil Procedure 24, and states as follows:

1. MainSource made two loans to Veros Partners. The loans are secured by the assets of Veros Partners, including all deposit accounts, equipment, accounts, inventory, instruments, general intangibles, investment property and chattel paper.
2. MainSource perfected its security interest in the collateral which secures the loans by filing a UCC Financing Statement with the Indiana Secretary of State on December 22, 2010 as Document No. 201000010762544 and through control of deposit accounts of Veros Partners maintained at MainSource. *See* I.C. § 26-1-9.1-314(a) (a security interest in deposit accounts is

perfected by control); I.C. § 26-1-9.1-104 (a secured party has control of a deposit account if the secured party is the bank with which the deposit account is maintained).

3. One of Veros Partners' accounts maintained at MainSource that comprises a part of MainSource's collateral is account XXXX0616. This is the operating account of Veros Partners. Veros Partners maintained other accounts at MainSource where investor funds were kept and where Veros Partners was identified as agent or manager for investors.

4. MainSource first became aware of the filing of this action on or about April 27, 2015 when MainSource received notice from the Securities and Exchange Commission that a Temporary Restraining Order ("**TRO**") had been entered by this Court. The TRO directed MainSource to place holds on accounts of Veros Partners maintained at MainSource identified in that Order, including account XXXX0616. MainSource promptly complied with the TRO.

5. Thereafter, in the late-afternoon on May 1, 2015, MainSource learned that the Court had entered an order directing MainSource to release \$70,000.00 from account XXXX0616 directly to Veros Partners ("**Order for Release**"). Prior to the entry of the Order for Release, MainSource was not served with process or advised that the SEC and/or the defendants intended to request the funds be released to Veros Partners.

6. On May 1, 2015, MainSource also learned that, with respect to Veros Partners, a Receiver had been appointed over "all of the private offering in which Defendant Veros Partners, Inc. controls investor funds." The Order Appointing Receiver also includes a freeze on "Receivership Assets" and a stay of litigation with respect to "Receivership Defendants".

7. Fed. R. Civ. P. 24(a) provides:

Intervention of Right. On timely motion, the court must permit anyone to

intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

8. “In evaluating the motion to intervene, the district court must accept as true the non-conclusory allegations of the motion.” *Lake Investors Dev. Group, Inc. v. Egidi Dev. Group*, 715 F.2d 1256, 1258 (7th Cir. 1983). “[I]ntervention may be denied only if it appears that the intervenor would not be entitled to relief under any set of facts which could be proved in support of the motion.” *Id.* at 1259.

9. “Whether a motion to intervene is timely is a determination within the sound discretion of the district judge.” *Jm McCormick Co. v. Int'l Truck & Engine Corp.*, 2007 U.S. Dist. LEXIS 47746, *4 (S.D. Ind. June 29, 2007). The factors bearing on the timeliness issue include: “(1) the length of time the intervenor knew or should have known of its interest in the case; (2) the extent of prejudice to the original litigating parties from the intervenor’s delay; (3) the extent of prejudice to the proposed intervenor if its motion is denied; and (4) any unusual circumstances.” *Id.*

10. MainSource’s motion to intervene is timely. This case has been pending for less than two (2) weeks. No prejudice or delay will result to the SEC and defendants by allowing MainSource to intervene. By contrast, MainSource will be severely prejudiced if it is not permitted to intervene because it will be unable to protect and preserve its rights in the assets of Veros Partners.

11. MainSource possesses a direct, significant and legally protected interest in property subject to the receivership and in account XXXX0616 pursuant to its perfected security

interest. *Id.* at *6 (“The ‘interest’ an applicant must possess to intervene under Rule 24(a) must be a direct, significant, legally protectable one.”).

12. MainSource’s ability to protect that interest would be impaired or impeded if it is not allowed to intervene. *Id.* at 7 (“Impairment occurs when the decision of a legal question, as a practical matter, would foreclose the rights of a proposed intervenor in a subsequent proceeding.”). The Order for Release requires that MainSource release \$70,000.00 in funds comprising part of its collateral directly to Veros Partners. Accordingly, MainSource has been directed to release its security interest in account XXXX0616 without due process because MainSource is neither made a party to this proceeding nor given the opportunity to object to the release of funds to Veros Partners.

13. Finally, MainSource’s interests are not adequately represented by existing parties. *Id.* at *9 (the burden of demonstrating that the intervenor’s interests are not adequately being represented is minimal). MainSource holds a first priority security interest in the assets of Veros Partners. Its position as secured creditor is unique to other creditors and no existing party can represent MainSource’s interests in its collateral.

14. Concurrently herewith, MainSource is filing its Emergency Motion to Reconsider May 1, 2015 Order to MainSource Bank to Release Funds from Veros Partners’ Bank Account.

WHEREFORE, MainSource respectfully requests that its Motion to Intervene be granted, that MainSource be permitted to intervene in this action, and for all other relief just and proper.

RUBIN & LEVIN, P.C.
Attorneys for MainSource Bank

By /s/ Joshua W. Casselman
R. Brock Jordan, Atty. No. 17060-49
Joshua W. Casselman, Atty. No. 27055-49

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2015, a copy of the foregoing *Mainsource Bank's Motion to Reconsider May 1, 2015 Order to Mainsource Bank to Release Funds from Veros Partners' Bank Account* was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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ORDER GRANTING MAINSOURCE BANK’S MOTION TO INTERVENE

This matter came before the Court on the Motion to Intervene filed by MainSource Bank (“Motion”). The Court having considered the Motion, now finds that it should be granted.

IT IS THEREFORE ORDERED that MainSource Bank be and hereby is made a party to this proceeding.

ALL OF WHICH IS ORDERED THIS ___ day of _____, 2015

Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

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