

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 RECONSIDER MAY 1, 2015
ORDER TO MAINSOURCE BANK TO RELEASE FUNDS FROM
VEROS PARTNERS’ BANK ACCOUNT**

MainSource Bank (“**MainSource**”), by counsel, respectfully moves the court to reconsider on an emergency basis its *Order to MainSource Bank to Release Funds from Veros Partners’ Bank Account* [Doc. 36] entered May 1, 2015 (“**Order for Release**”), pursuant to which the Court directed MainSource to release \$70,000.00 from account XXXX0616 to Veros Partners, Inc. (“**Veros Partners**”). As set forth below, MainSource holds a perfected security interest in the assets of Veros Partners, including account XXXX0616, securing loans from MainSource to Veros Partners which are in default. Veros Partners attempts to prop up its business with MainSource’s collateral, all the while declining to offer MainSource any form of

adequate protection and threatening contempt sanctions against MainSource for seeking the opportunity to be heard before it is forced to relinquish its security interest in the collateral.

1. MainSource made two loans to Veros Partners pursuant to Loan No. XXXX1041 and Loan No. XXXX4750. [Affidavit of David L. Colter (“Colter Aff.”) ¶ 4].

2. Loan No. XXXX1041 (“**Loan 1**”) is most recently evidenced by a Business Loan Agreement and Commercial Promissory Note each dated February 15, 2013 (“**Note 1**”), executed by Veros Partners and delivered to MainSource. [Colter Aff. ¶ 4, Exs. 1, 2].

3. Loan No. XXXX4750 (“**Loan 2**”) is most recently evidenced by a Business Loan Agreement and Commercial Line of Credit Renewal Agreement and Note each dated November 18, 2014 and a Loan Modification Agreement dated March 18, 2015 (“**Note 2**”), executed by Veros Partners and delivered to MainSource. [Colter Aff. ¶ 5, Exs. 3-5].

4. Pursuant to the Loan Modification Agreement, Veros Partners’s Line of Credit Limit was increased from \$450,000.00 to \$520,000.00 on March 18, 2015, just over a month before this lawsuit was initiated by the Securities and Exchange Commission (“**SEC**”). [Colter Aff. ¶ 6].

5. MainSource was unaware that the SEC was investigating alleged illegal activities by Veros Partners in the weeks and months preceding the filing of this action. [Colter Aff. ¶ 7]. Veros Partners never disclosed this information to MainSource when Veros Partners requested and was given a \$70,000.00 increase in its credit limit. [Colter Aff. ¶ 7]. Had MainSource known of the SEC’s investigation, it would not have agreed to increase Veros Partners’ credit limit. [Colter Aff. ¶ 7].

6. Loan 1 and Loan 2 are secured by Commercial Security Agreements most recently dated February 15, 2013 and November 18, 2013, respectively (collectively, “**Security**

Agreements”). [Colter Aff. ¶ 8, Ex. 6].¹ Pursuant to the Security Agreements, Veros Partners granted MainSource a security interest in, among other things, all deposit accounts, equipment, accounts, inventory, instruments, general intangibles, investment property and chattel paper (“**Collateral**”) as security for Loan 1 and Loan 2. [Colter Aff. ¶ 10].

7. MainSource perfected its security interest in the Collateral 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. [Colter Aff. ¶ 11, Ex. 7]. 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).

8. In addition to its perfected security interest, Veros Partners’ Deposit Account Agreement and Disclosure with MainSource and Note 1 and Note 2 entitle MainSource to setoff against any and all of Veros Partners’ deposit accounts. [Colter Aff. ¶ 12]. MainSource also has a common law right of setoff. *First Bank of Whiting v. Samocki Bros. Trucking Co.*, 509 N.E.2d 187, 198 (Ind. Ct. App. 1987) (“When the depositor becomes indebted to the bank, a mutual debtor-creditor relationship arises that justifies a bank's right of set-off, i.e., a self-help device for extinguishing mutual debts. The right arises by operation of law . . .”).

9. The amount due pursuant to Loan 1 is not less than \$185,885.00 as of April 27, 2015. The amount due pursuant to Loan 2 is not less than \$470,490.99 as of April 27, 2015. [Colter Aff. ¶ 13].

10. The Temporary Restraining Order (“**TRO**”) entered by this Court on April 23,

¹ The Business Loan Agreements, Note 1, Note 2, the Loan Modification Agreement and the Security Agreements are collectively referred to herein as “**Loan Documents**”.

2015 includes a prima facie finding that Veros Partners has violated federal law, including engaging in fraud, will likely repeat these violations and may dissipate, conceal or transfer assets from the jurisdiction of this Court. [Doc. 12]. The TRO also prohibits Veros Partners from engaging in its normal business operations and materially alters Veros Partners' business and financial condition by restraining Veros Partners from soliciting, accepting or depositing any monies from actual or prospective investors in connection with private offerings of securities and freezing assets of Veros Partners. [Doc. 12].

11. The Agreed Order Appointing Receiver entered by this Court on May 1, 2015 appoints a Receiver over all private offerings in which Veros Partners controls investor funds, requires Receiver approval of any expenditures by Veros Partners over \$5,000, dismisses all employees and officers of the "Receivership Defendants" (as defined in that Order), grants the Receiver complete control over the "Receivership Defendants" and continues the freeze on certain assets of Veros Partners subject to MainSource's security interest, including account XXXX0616. [Doc. 34].

12. The filing of the SEC lawsuit and the entry of the TRO and Order Appointing Receiver constitute events of default under the Loan Documents. [Colter Aff. ¶ 14]. Specifically, Veros Partners' events of default include, among others, (i) its breach of the representation and warranty that it is in compliance with and has conducted its business in accordance with laws and regulations; (ii) the material adverse change in Veros Partners' business, financial condition or the Collateral which secures Loans 1 and 2; (iii) the material impairment of obligors' ability to perform under the Loan Documents or material impairment of MainSource's rights in the Collateral; (iv) Veros Partners' breach of the covenant to preserve and protect MainSource's rights in the Collateral; (v) the existence of litigation, governmental

proceeding, default, or other event that may materially and adversely affect Veros Partners' business, financial condition or the Collateral; (vi) the suspension of Veros Partners' normal business activities; (vii) the appointment of a receiver in this case; (viii) MainSource's good faith belief that its rights in the Collateral are or will be impaired or that the Collateral itself is or will be impaired; and (ix) MainSource's good faith belief that Veros Partners is unable or will become unable to perform its duties under the Loan Documents.

13. Pursuant to the Loan Documents, Veros Partners waived any notice of intent to accelerate or demand for payment, and further agreed that MainSource did not waive any right by delaying in the enforcement of its rights. Accordingly, MainSource's rights to enforce its security interest in the Collateral arose immediately and without notice upon Veros Partners' default.

14. On or about April 27, 2015, MainSource received notice from the SEC of the TRO. [Colter Aff. ¶ 15]. MainSource immediately placed holds on the accounts maintained by MainSource identified in that Order as directed by the Court. [Colter Aff. ¶ 15].

15. On April 30, 2015, counsel for MainSource spoke with SEC attorney Doressia L. Hutton by telephone. During that call, counsel for MainSource advised Ms. Hutton that MainSource held a security interest in the assets of Veros Partners, including its deposit accounts. MainSource's Financing Statement is also a public record.

16. In the late-afternoon on May 1, 2015, MainSource, through its counsel, first learned that the Court had entered the Order for Release directing MainSource to release \$70,000.00 from account XXXX0616 directly to Veros Partners. [Colter Aff. ¶ 16]. Based on the docket, it does not appear that a motion requesting release of those funds preceded the entry of the Order for Release. Additionally, the Order for Release does not contain any restrictions on

Veros Partners' use of the funds. [Doc. 36].

17. Because it was not made a party to this proceeding by the SEC or served with process, MainSource was unaware that any request had been made to release funds from account XXXX0616 until after the Order for Release was entered, and MainSource did not have an opportunity to oppose that request. [Colter Aff. ¶ 16].

18. Based on the docket, it is unclear whether this Court is aware that Veros Partners is not simply a depositor with MainSource. It is also a borrower who pledged account XXXX0616 and other assets to secure loans made by MainSource on which there is owed in excess of \$650,000.00.

19. After becoming aware of the Order for Release, MainSource's counsel sent an email to the SEC, the Receiver and counsel for the defendants and spoke with the SEC, Receiver and counsel for Veros Partners regarding MainSource's perfected security interest in account XXXX0616.

20. On May 5, 2015, counsel for MainSource received an email from counsel for Veros Partners in which he claimed the \$70,000 is needed "to keep the [Veros Partners] running in the short term" and in making payroll later this week, that Veros Partners could not offer MainSource any adequate protection in the form of replacement collateral and that Veros Partners would request contempt sanctions against MainSource if the funds were not released to Veros Partners by 5:00 p.m. today. A true and correct copy of that email is attached as Exhibit 1.

21. MainSource is not willfully ignoring the Court's Order for Release and fully intends to comply with all aspects of that Order if this Motion to Reconsider is denied. MainSource merely requests the opportunity to be heard regarding its interest in account XXXX0616 before those funds are released to Veros Partners and MainSource's security interest

is lost forever. To date, MainSource has been denied due process or the opportunity to be heard and has been threatened with a request for contempt sanctions by counsel for Veros Partners for seeking that opportunity.

22. Because the Order for Release specifically directs MainSource to release \$70,000.00 to Veros Partners rather than simply lifting the freeze on account XXXX0616, it will have the affect of eliminating MainSource's security interest in account XXXX0616 without any adequate protection in return. The Order for Release alters agreements between MainSource and Veros Partners entered into long before the SEC initiated this action and works to the detriment of MainSource and to the benefit of Veros Partners – the very party alleged to have engaged in illegal and fraudulent conduct. It also has the potential effect of elevating the interests of unsecured creditors over the interest of MainSource as secured creditor. Such results are contrary to federal receivership principles. *Youngstown Sheet & Tube Co. v. Patterson Emerson Comstock*, 227 F. Supp. 208, 216 (N.D. Dist. 1963) (“A receiver takes the res of the receivership estate subject to all existing liens, but the rights of creditors remain as they were when the receiver was appointed.”); *SEC v. Wing*, 599 F.3d 1189, 1195 (10th Cir. 2010) (The appointment of a receiver does not determine any rights nor destroy any liens.).

23. Because the directive in the Order for Release that MainSource “activate the ACH functionality on account XXXX0616 so that ACH deposits may be accepted” does not prejudice MainSource's rights, MainSource has complied with that directive.

24. Additionally, the funds in account XXXX0616 may not be part of the receivership estate and therefore may lie outside the jurisdiction of this Court. As set forth in the Order for Release, account XXXX0616 is the operating account of Veros Partners. Veros Partners maintained other accounts at MainSource where investor funds were kept and where Veros

Partners was agent or manager for investors. [Colter Aff. ¶ 17].

25. In order to exclude Veros Partners' legitimate business services from the reach of the receivership, the Order Appointing Receiver limits the definition of "Receivership Assets" to "all of the private offering in which Defendant Veros Partners, Inc. controls investor funds." [Doc. 34]. Additionally, the definition of "Receivership Defendants" does not include the Veros Partners entity and all its assets, but is instead limited to "all private offerings in which Defendant Veros Partners, Inc. controls investor funds." [Doc. 34]. The SEC's consent to \$70,000.00 being released from Veros Partners' operating account suggests that those funds do not represent "investor funds" comprising part of the receivership estate. [Doc. 36].

26. Therefore, if the funds in account XXXX0616 are not "investor funds," MainSource should not be required to relinquish its security interest in those funds.

27. Based on the information made available to it, MainSource has a good faith basis to conclude that the funds on hold in account XXXX0616 may be its only legitimate source of recovery. [Colter Aff. ¶ 18]. MainSource's other collateral for Loan 1 and Loan 2 consists of office furniture and equipment of Veros Partners which is believed to have nominal value. [Colter Aff. ¶ 18].

28. MainSource requests that a hearing be set on this Motion to Reconsider on an emergency basis.

WHEREFORE, MainSource respectfully requests that, following the hearing on its Motion to Reconsider, the Court modify the Order for Release to require that MainSource maintain the administrative hold on account XXXX0616 until further order of the Court and to eliminate the requirement that MainSource release the funds to Veros Partners, and 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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/s/ Joshua W. Casselman
Joshua W. Casselman

Joshua Casselman

From: Tony Paganelli <tony@paganelligroup.com>
Sent: Tuesday, May 05, 2015 11:10 AM
To: Brock Jordan; Joshua Casselman
Cc: moyer@sec.gov; hutton@sec.gov; James Bell; J. Kiefer; John McCauley; wwendling@ckplaw.com; Jim Rossow
Subject: Veros Partners and MainSource Bank

Brock and Josh,

Thanks for calling me back last night about the dispute between your client, MainSource Bank, and my client, Veros Partners, Inc. During our call, you asked me two questions and I committed to get answers for you to both questions:

1. You asked if the order was intended to compel MainSource to release exactly \$70,000, or if the intent was to compel the release of all funds on deposit based on a belief that Veros Partners' account had a balance of \$70,000. The answer is the former. As a result of negotiations between Veros Partners and the SEC, the order allowed for the release of \$70,000 to keep the company running in the short term, particularly to make payroll later this week. The remainder of Veros Partners' funds on deposit remain frozen.
2. You asked if there was a middle ground in the form of adequate protection that could be given as replacement collateral. I'm afraid the answer is no. I've spoken with my client and with counsel for the SEC, and there is no other available collateral. Further, there is no room for negotiation on the amount of money that needs to be available for Veros Partners to meet its short-term needs.

As a legal matter, where this leaves us is that the bank is indisputably in contempt. It is deliberately disobeying an unambiguous order from Judge Stinson. We do not think she will react well to the bank's due process/lack of notice argument after the bank already honored a previous order and froze its customer's account. We also do not think Judge Stinson will be impressed that the bank's declaration of default did not come when the bank received the complaint and the freeze order, but rather only came over a week later after the bank received the second order compelling it to release the funds to Veros Partners. And, as I mentioned last night, I do not believe there has been a default here. If the bank thought otherwise, I expect it would have declared a default sooner.

As a practical matter, where this leaves us is that Veros Partners may quickly collapse if these funds are not released. This means that the bank will not be repaid over \$500,000 that it is owed, and Veros Partners' investors will not be repaid. It seems very short-sighted for the bank to grab less than 15% of what it is owed when doing so virtually guarantees it will never see the remaining 85%. (As an aside, the bank likely would not be able to keep the 15% either, because the SEC would almost certainly seek to recoup it from the bank.) Further, the bank would be sued for conversion, in addition to any contempt sanctions that Judge Stinson likely would impose.

Please consider this to be a demand that the bank immediately comply with Judge Stinson's order and release \$70,000 to Veros Partners before 5:00 pm today. Otherwise, I will seek to have the bank held in contempt and sanctioned. I will ask the court for an expedited hearing, and the SEC counsel have already asked me to notify the court of their desire to participate in such a hearing by phone from Chicago if logistics will not permit them to appear in person.

Best regards,

Tony Paganelli

F. Anthony Paganelli
Attorney at Law

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
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UNITED STATES SECURITIES)
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Defendants,)
)
PIN FINANCIAL LLC,)
)
Relief Defendant.)

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

**ORDER SETTING HEARING ON MAINSOURCE BANK’S
MOTION TO RECONSIDER**

This matter came before the Court on the Motion to Reconsider the Court’s May 1, 2015 *Order To MainSource Bank To Release Funds From Veros Partners’ Bank Account* filed by MainSource Bank (“Motion”). The Court having considered the Motion, now finds that it should be set for hearing.

IT IS THEREFORE ORDERED that MainSource Bank’s Motion to Reconsider is set for hearing before the Honorable Jane Magnus-Stinson, at _____:m, on May _____, 2015 in Courtroom _____ of the United States District Court for the Southern District of Indiana, Indianapolis Division, located at 46 East Ohio Street, Indianapolis, Indiana 46204.

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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