

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

Case No. 1:15-cv-659-JMS-MJD

VEROS PARTNERS, INC,  
MATTHEW D. HAAB,  
JEFFERY B. RISINGER,  
VEROS FARM LOAN HOLDING LLC,  
TOBIN J. SENEFELD,  
FARMGROWCAP LLC,  
PINCAP LLC, and

Defendants,

PIN FINANCIAL LLC,

Relief Defendant.

**RECEIVER’S MOTION FOR AUTHORITY TO ASSIGN TO FARMGROWCAP, LLC  
INVESTORS THEIR PROPORTIONATE SHARE IN THE JUDGMENT  
FARMGROWCAP, LLC HAS AGAINST JAMES R. WILLIAMS AND ROBERT  
WILLIAMS, TO ABANDON FARMGROWCAP, LLC’S CLAIMS AGAINST RJW  
WILLIAMS FARMS, INC., JAMES R. WILLIAMS AND ROBERT WILLIAMS AFTER  
ASSIGNMENT TO INVESTORS, AND TO RELEASE FARMGROWCAP, LLC FROM  
THE RECEIVERSHIP UPON ASSIGNMENT OF JUDGMENT AND FINAL  
DISTRIBUTION TO FARMGROWCAP, LLC INVESTORS**

William E. Wendling, Jr., the Receiver herein, by counsel, respectfully seeks the Court’s authority to assign to FarmGrowCap, LLC Investors their proportionate share in the judgment FarmGrowCap, LLC (hereinafter “FGC) has against James R. Williams and Robert Williams, to abandon the remaining claims against RJW Williams Farms, Inc., James R. Williams, and Robert Williams (collectively “the Williams Claims”) after assignment, and to release FarmGrowCap,

LLC from the Receivership upon assignment of the judgment and final distribution to FarmGrowCap Investors. In support of this motion, the Receiver states:

1. On April 22, 2015, the Plaintiff, United States Securities and Exchange Commission (“SEC”) filed its Complaint [[Filing No. 1](#)] in this action and a motion for temporary restraining order, asset freeze and other relief [[Filing No. 3](#)]. Thereafter, the Court entered a Temporary Restraining Order [[Filing No. 12](#)].
2. On May 1, 2015, the Agreed Order Appointing Receiver (“Agreed Order”) was entered [[Filing No. 34](#)], appointing William E. Wendling, Jr. to serve without bond as the Receiver for the estates of the Receivership Defendants.
3. The Agreed Order at Paragraph 38, provides that the Receiver “may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.” [[Filing No. 34 at p.15](#)]
4. The Agreed Order further provides in Paragraph 44 that “[s]ubject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted...” [[Filing No. 34 at p. 17](#)]
5. Further, the Receiver is charged with the responsibility to:

To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Defendants;

To take such action as necessary and appropriate for the preservation of Receivership

Property or to prevent the dissipation or concealment of Receivership Property;

To take such other action as may be approved by this Court.

*Agreed Order Appointing Receiver* [[Filing No. 34 at p. 5](#)]

6. One of the primary assets that the Receiver took possession of was FGC, which was the investment vehicle used by the Defendants to take Investors' money to invest in numerous short-term loans to farming operations.
7. FGC invested investor money in a farming operation located in Illinois known as RJW Williams Farms, Inc. Specifically, FGC loaned \$3,320,000.00 to RJW Williams Farms, Inc. in 2013 and \$3,600,000.00 in 2014.
8. Unfortunately, RJW Williams Farm, Inc. defaulted on the payments to these loans and FGC brought a lawsuit against the farming operation and against James R. Williams and Robert Williams as guarantors of the loans. That action was commenced on February 3, 2015 in Piatt County Illinois under cause number 15-L-1 (hereinafter "Piatt County Complaint").
9. The Piatt County Complaint alleged that RJW Williams Farms and the guarantors, as of December 31, 2014, owed FGC \$1,206,083.00 in principal and \$90,647.00 in interest on the 2013 loan, and \$3,360,593.00 in principal and \$334,833.00 in interest on the 2014 loan (totaling \$4,992,156.00) plus accumulating interest and attorney fees.
10. Upon appointment the Receiver contacted FGC's attorney that commenced the lawsuit and was provided with all documentation and information relating to the complaint. In addition, the Receiver contacted all defendants to the Piatt County Complaint requesting a meeting for purposes of discussing the merits of the complaint and possibility of finding a negotiated settlement.

11. After reviewing the information and documentation regarding the case and discussing the situation with other RJW Williams creditors it became apparent that the farming operations was in significant financial distress. The fact that the Piatt County Complaint was filed further jeopardized the continued operation of the farming operations because other creditors were contemplating foreclosing on their loans. If other creditors started filing foreclosure actions that most likely would force RJW Williams into bankruptcy. Since the security interest that FGC had on RJW Williams assets was junior to other secured debt, putting the farming operation into bankruptcy would have been detrimental to the FGC investors.
12. The Receiver agreed with other creditors that, if possible, keeping the farming operations going would allow cash flow to make payments of the FGC loans as well as other debts of the farming operation.
13. The Receiver was in negotiations with the defendants from basically the inception of the Receivership until a settlement was reached in June of 2016. As part of the negotiation process the Receiver demanded that the defendants provide good faith payments on the debt to FGC. During the time settlement terms were discussed RJW Williams paid the Receiver \$1,924,042.00. After settlement was reached the Receiver received another \$324,052.00<sup>1</sup>.
14. The final element of the settlement agreement with RJW Williams was a promissory note in the amount of \$2,258,425.47. The Receiver negotiated personal guarantees on this note. The terms of the note were 5% payable at \$500,000.00 a year until the final payment. RJW Williams defaulted on this part of the settlement agreement.

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<sup>1</sup> The receipt of these funds took care of the cash RJW Williams agreed to pay per the settlement agreement.

15. During the time that the Receiver was demanding payment on the note RJW Williams Farms, Inc. filed bankruptcy. On September 13, 2016, the Receiver requested and was granted permission from the Court to hire David Krebs to assist the Receiver to review the bankruptcy [[Filing No. 268](#) and [Filing No. 275](#)]. Upon review it was determined that the Receiver should take no action in the bankruptcy court because the Receivership security in RJW Williams Farm's assets were substantially subordinate to other creditors security and it was apparent that there would be no funds available to FGC after assets were sold.
16. Although RJW Williams filed bankruptcy, James R. Williams and Robert Williams had not filed bankruptcy and they were personally responsible to pay the promissory note associated with the settlement agreement. The Receiver, through counsel, demanded payment on the note from James and Robert Williams, but they did not respond. Therefore, the Receiver requested and was granted permission to hire Mr. Krebs to file an action against Robert and James Williams to collect on the promissory note [[Filing No. 381](#) and [Filing No. 388](#)]. (In the request to hire Mr. Krebs the Receiver stated that the budget for filing the complaint be limited to \$5,000.00 because, through experience in dealing with the Williams over the last 30 months, the Receiver had little confidence the Williams will be able to pay on the debt or have assets to sufficient to satisfy the debt to FGC.) The settlement agreement contained a provision that if legal action was needed to enforce the agreement venue would be in the Federal District Court of Southern Indiana. That complaint was filed on June 29, 2017 under the caption *William E. Wendling, Jr., as Receiver for Farm Grow Cap LLC v. James R Williams and Robert Williams* [[Filing No. 1](#)].

17. James and Robert Williams did not respond to the complaint and the clerk issued a default on October 23, 2017 [[Filing No. 15](#)]. Counsel for FGC filed for an entry of judgment on November 21, 2017 [[Filing No. 16](#)]. On December 7, 2017, the Court entered a Default Judgment against James R. Williams and Robert Williams in the amount of \$2,404,104.94 as of June 26, 2017, plus interest thereafter at \$461.06 per day until paid, \$5,000.00 in attorney's fee, and costs of the action [[Filing No. 17](#)].
18. The collection of this judgment is the only asset left for the Receiver to pursue in this Receivership. In essence, the mission of collecting assets for the Receivership is complete. But for the collection of the Williams default, the Receiver can start the process of closing the Receivership.
19. The Receiver does not believe that the Receivership as to FGC should continue in hopes of collecting on the Williams judgment. However, the Receiver wanted input from the FGC Investors as to what they wanted regarding the Williams Judgment. The Receiver sent a notice to the FGC Investors outlining the situation with RJW Williams Farm, Inc, James R. Williams and Robert Williams collection issue. ([Exhibit A](#)) In the notice, the Receiver asked the Investors to consider three options for dealing with the Williams judgment collection: (1) The Receiver could continue on with the Receivership, make another interim distribution, but retain funds for anticipated expenses of pursuing the Williams Judgment; (2) The Receiver could assign the judgment to the Investors and they could pursue if they elected to do so; or (3) The Receiver could abandon the claim against the Williams and proceed to close the Receivership.
20. There are approximately 75 FGC Investors. Fifty (50) Investors responded indicating they wanted the Receiver to abandon the Williams claim. Two (2) Investors expressed a desire to purchase the judgment. Based on the responses, it is the Receiver's

understanding that the Investors do not feel that any more Receivership assets should be used to pursue the Williams judgment, nor do they wish for the Receiver to incur fees to negotiate and obtain Court approval of an assignment of the whole with a small number of investors (which assignment may also cause delay in the proceedings). The Receiver concurs with that sentiment.

21. At least one (1) Investor has requested an assignment and has approached other Investors seeking their approval to have this done. The Receiver has received three (3) e-mails from said Investor. The Receiver has also received numerous e-mails from Investors in response, stating they did not want the Receivership to spend any more time or money on this issue and reiterating that they want the Receivership terminated. The Investors believe that any time spent by the Receiver on the RJW Williams matter causes the Receivership to remain in existence.

22. To resolve the conflict between Investors who would like to abandon the Williams Claims and the Investors who would like to pursue the claims, the Receiver proposes to simply assign to each individual Investor his/her right to collect proportionate to his/her share in the default judgment. This straight forward procedure (utilizing a form of assignment with only the individual investor names and percentages set forth) will allow each Investor to determine for themselves what they want to do, if anything, to execute against the judgment.

23. Considering the above, the Receiver respectfully asks the Court to authorize the Receivership to abandon activity on the claims against RJW Williams Farms, Inc., James R. Williams and Robert Williams and instead assign to each FGC Investor his or her proportionate share of the judgment against James R. Williams and Robert Williams. Should the Court grant the Receiver's request to abandon the RJW Williams claims, the

Receiver believes that it is in the best interest of the Receivership to release the business entity, FarmGrowCap, LLC, from the Receivership after both assignment of the Williams Claims and the Receiver makes a final distribution to the FGC Investors. The Receiver would like to make that final distribution of funds to the FGC Investors prior to the end of the year and by separate motion will set forth the details of the distribution.

**WHEREFORE**, the Receiver, by counsel, requests that this Court enter an order allowing the Receiver to provide each FarmGrowCap, LLC Investor an assignment of his or her proportionate share of the judgment against James R. Williams and Robert Williams, to abandon FarmGrowCap LLC's claims against RJW Williams Farms, Inc., James R. Williams, and Robert Williams, and that the Court release FarmGrowCap, LLC from the Receivership after assignment of said judgment and final distribution of funds are made to the FGC Investors, and for all other proper relief.

Dated: December 14, 2017

/s/ William E. Wendling, Jr.

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Respectfully submitted,

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***Counsel for the Receiver***

**Certificate of Service**

I hereby certify that on December 14, 2017, a copy of the foregoing **Motion for Authority to Assign to FarmGrowCap, LLC Investors Their Proportionate Share in the Judgment FarmGrowCap, LLC has Against James R. Williams and Robert Williams, to Abandon FarmGrowCap LLC's Claims Against RJW Williams Farms, Inc., James R. Williams, and Robert Williams After Assignment to Investors, and to Release FarmGrowCap, LLC From the Receivership Upon Assignment of Judgment and Final Distribution to FarmGrowCap, LLC Investors** was filed electronically. Notice of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*s/Anne Hensley Poindexter*  
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