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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

VESCOR CAPITAL CORP., a Nevada corporation,
VESCOR CAPITAL, INC., a Nevada corporation,
VESCORP CAPITAL, LLC, a Nevada limited liability
company, VESCORP CAPITAL IV-A, LLC, a Nevada
limited liability company, VESCORP CAPITAL IV-M,
LLC, a Nevada limited liability company, a Nevada limited
liability company, and VAL E. SOUTHWICK,

DEFENDANTS.

**MEMORANDUM OF
POINTS AND
AUTHORITIES IN
SUPPORT OF MOTION
FOR STAY OF
LITIGATION**

Civil No. 1:08cv00012

Judge Dee Benson

Plaintiff, Securities and Exchange Commission (the “Commission”), by and through its counsel of record, respectfully requests, subject to further order of this Court, that this Court enter an order staying certain actions as set forth in greater detail in the accompanying Motion and below. In support thereof, the Commission states as follows.

STATEMENT OF FACTS

1. On February 6, 2008, the Commission instituted the above-captioned enforcement action, alleging that individual Defendant Val E. Southwick (“Southwick”), through dozens of corporations, was involved in the fraudulent offer and sale of unregistered securities and, in so doing, violated the Securities Act of 1933 (the “Securities Act”) and the Securities Exchange Act of 1934 (the “Exchange Act”).

Complaint (Docket # 1) at ¶ 1.

2. On February 6, 2008, counsel for defendants, signed an Acceptance of Service of the Complaint, Civil Cover Sheet and Summonses for Southwick and the above-captioned entities. Acceptance of Service (Docket # 2).

3. On or around September 1, 2006, Oak Valley Investments filed a complaint against Southwick, other individual defendants and numerous entities, including Vescor Capital Corp., an entity named in the Commission’s Complaint. Oak Valley Invs., L.P. v. Southwick, et al., Civil Action No. 2:06-cv-00737-DB-DN (D. Utah, Central Division).

4. The Plaintiffs in the Oak Valley action are individuals or entities who claim to have been defrauded by Southwick. They are seeking damages from Southwick and/or entities owned or controlled by Southwick under, *inter alia*, the Exchange Act and Utah Code Ann. §§ 61-1-1, et seq. In addition, the Oak Valley Plaintiffs are seeking damages for fraud in the inducement, negligent misrepresentations and unjust enrichment. Finally, Plaintiff Oak Valley Investments seeks an accounting from Vescor Capital Corp.

5. Southwick has provided Commission counsel a list of currently pending cases against him and/or his entities in California, Nevada and Utah. See Motion for Stay filed concurrently herewith at Exhibit “C”. The list includes cases filed in state and federal courts. There may be additional matters not included on Exhibit “C” as the

Commission has not had the opportunity to examine defendants' records of pending litigation as of the time of this matter.

6. There are numerous unpaid third-party, non-investor creditors in addition to investors who may have claims against Southwick and/or his entities but who not filed suit against Southwick or his numerous entities.

7. In addition to these actions, there are currently two pending bankruptcy matters. In re Vescor Dev., LLC, Bankruptcy Petition No. 07-1521-mkn (Bankr. Nev. 2007); In re Vescor Capital Inc., Bankruptcy Petition No. 07-22435 (Bankr. Utah 2007). Counsel for the Commission has spoken with the trustees appointed in both bankruptcy matters regarding the scope and nature of these bankruptcy proceedings. The Commission is not requesting that these bankruptcy proceedings be stayed by order of this Court at this time.

7. Absent a stay, creditors and/or investors may continue or commence litigation against or attempt to collect claims against Southwick and/or his entities. This piecemeal litigation may diminish the assets available for distribution to investors, creditors or others with claims against Southwick and the numerous entities.

RELIEF REQUESTED

Subject to further order of this Court, that this Court enter and order staying, for a period of 90 days from the date of the execution of the Order Granting the Motion for Stay:

- (i) the commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other action or proceeding, other than actions of the Commission related to the above-captioned enforcement action, against Vescor Capital Corp., Vescor Capital, Inc.,

Vescorp Capital, LLC, Vescorp Capital IV-A, LLC, Vescorp Capital IV-M, LLC (collectively, the “Entities”)¹ or Southwick;

- (ii) the enforcement against the Entities and Southwick or against property now held in the name of or by the Entities and/or Southwick, of any judgment obtained before the filing of the Complaint in this action;
- (iii) any act to obtain possession of property held by the Entities or Southwick or to exercise control over property held by the Entities or Southwick;
- (iv) any act to create, perfect or enforce any lien against property held by the Entities or Southwick;
- (v) any act to collect, assess or recover any claims related to the Entities or Southwick, or against property held by the Entities or Southwick; and,
- (vi) the exercise of any rights of setoff or recoupment; and
- (vii) the stay shall not include any action relating to the bankruptcy proceedings currently pending in the District of Utah, In re Vescor Capital Inc., Bankruptcy Petition No. 07-22435 (Bankr. Utah 2007), or the District of Nevada, In re Vescor Dev., LLC, Bankruptcy Petition No. 07-1521-mkn (Bankr. Nev. 2007).

A stay is necessary in order for the Commission to prepare an accounting, to evaluate Southwick’s assets and to determine in what manner these assets may be marshaled, and if appropriate, consolidated. A stay will also assist the Commission in determining if other relief is necessary and appropriate. In addition to issuing a stay as requested, the Commission requests the Court to approve the proposed form of “Notice of Stay,” which is attached hereto as Exhibit “B”. The Commission proposes that it file the

¹ In addition to the entities named in the Complaint that the Commission filed on February 6, 2008, other entities owned or controlled, in part or wholly, by Southwick are identified in Exhibit “A” to the Motion for Stay and should be subject to any stay order. The Commission reserves the right to supplement Exhibit “A” as necessary.

proposed Notice of Stay in all currently pending actions² and in all actions that may be filed in the future.

ARGUMENT

In determining appropriate relief, this Court possesses the power to “issue a variety of ancillary relief measures,” including ordering a stay of all pending and future litigation. SEC v. Wencke, 622 F.2d 1363, 1369 & 1371 (9th Cir. 1980). The Court’s power to issue the requested stay is based on its well-established inherent powers. Id. at 1369, accord SEC v. Acorn Tech. Fund, L.P., 429 F.3d 438, 442-43; SEC v. Merrill Scott & Assocs., Ltd., 2007 WL 26981, at *1, No. 2:02-cv-39 (D. Utah Jan. 3, 2007). This power can also be said to have derived from the All-Writs Act, which gives federal courts power to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law,” including the power to stay the prosecution of lawsuits. 28 U.S.C. § 1651(a). That authority facilitates the “strong federal interest in insuring effective relief in SEC actions brought to enforce the securities laws.” Wencke, 622 F.2d at 1372.

Based on the foregoing, the Commission respectfully submits that this Court has the power to issue the stay requested herein and that the stay is necessary to allow the Commission to prepare an accounting, to evaluate Southwick’s assets and to determine whether the appointment of a receiver or other relief is necessary and appropriate. Accordingly, the Commission requests the Court to enter the stay requested herein.

CONCLUSION

For the reasons set forth above, the Commission respectfully requests this Court to enter the requested stay for a period of 90 days from the date on which the Court

² A list of all known currently pending cases against the Entities and/or Southwick is attached to the Motion for Stay as Exhibit “C”. The Commission reserves the right to supplement Exhibit “C” as necessary. Counsel for plaintiffs and defendants in all these matters will receive a copy of the Motion, Memorandum and Exhibits.

executes the Order Granting Motion for Stay. Entities seeking to take any of the actions stayed will be required first to obtain leave of Court.

Dated this 26th day of February 2008.

Respectfully submitted,

/s/ Thomas M. Melton

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