

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JENNIFER ECKLUND, Receiver,	§	
Plaintiff	§	
	§	ANCILLARY CIVIL ACTION
v.	§	NO. 4:18-cv-00359
	§	
ROBERT and SANDRA BAILEY, et al.,	§	
Defendants	§	

**DEFENDANT STEPHEN GARRETT'S RESPONSE TO RECEIVER'S
MOTION TO APPOINT MAGISTRATE JUDGE AS MEDIATOR**

Ancillary Defendant Stephen Garrett files this response in opposition to Receiver's Motion to Appoint Magistrate Judge as Mediator (Dkt. 53).

1. Garrett opposes the appointment of a magistrate judge as mediator because he is more comfortable having frank discussions about the strengths and weaknesses of the parties' respective positions with a mediator who is not affiliated with the Court. Garrett believes reaching a settlement at mediation would be more likely with a private mediator.
2. Other than the cost savings, the benefits that the Receiver attributes to mediating with a magistrate judge are equally applicable to a qualified and experienced private mediator. The Receiver's claim against Garrett in this case totals \$162,766. (Receiver's Compl. Against Certain Winning Investors (Dkt. 1) ¶ 40.) Given this amount in dispute, the cost of a private mediator is

justified since it will make Garrett more comfortable and amenable to openly discussing settlement possibilities.

3. One reason for Garrett's reluctance to discuss settlement openly with a magistrate judge is that a magistrate judge may make or influence important rulings in the case. The Receiver responds to this concern by stating that she "could not envision any circumstance in this Case where the magistrate judge would be ruling on motions." (Receiver's Mot. to Appoint Magistrate Judge as Mediator (Dkt. 53) n.1.) However, 28 U.S.C. section 636(b)(1) and Federal Rule of Civil Procedure 72 plainly give magistrate judges authority to rule on non-dispositive motions and to conduct hearings and recommend rulings and findings of fact on dispositive motions, including the Receiver's pending motion for summary judgment (Dkt. 55). It is understandable that Garrett would not feel comfortable engaging in the sort of discussion necessary to facilitate an effective mediation with a person holding such authority.
4. For the foregoing reasons, Defendant Stephen Garrett requests that the Court deny the Receiver's Motion to Appoint Magistrate Judge as Mediator (Dkt. 53), appoint a private mediator instead, and grant all other just relief in favor of Garrett.

Respectfully submitted,

THE SINGHAL LAW FIRM

By: /s/ Dinesh H. Singhal

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**ATTORNEY FOR DEFENDANT,
STEPHEN GARRETT**

CERTIFICATE OF SERVICE

I certify that, on February 14, 2019, a copy of the foregoing Defendant Stephen Garrett's Response to Receiver's Motion to Appoint Magistrate Judge as Mediator, along with the attached proposed order, has been served by electronic service through the electronic case filing system (ECF).

/s/ Geoffrey E. Riddle
Geoffrey E. Riddle

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**ORDER DENYING RECEIVER'S MOTION TO APPOINT
MAGISTRATE JUDGE AS MEDIATOR**

Receiver's Motion to Appoint Magistrate Judge as Mediator (Dkt. 53) is hereby **DENIED**. The Court hereby appoints the following person as mediator.

NAME: _____

TBN: _____

EMAIL: _____

PHONE: _____