

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

SECURITIES AND EXCHANGE	§	
COMMISSION	§	
Plaintiff,	§	
	§	
	§	
v.	§	Case 04:17-CV-00336-ALM
	§	
THURMAN P. BRYANT, III and	§	
BRYANT UNITED CAPITAL FUNDING,	§	
INC., ARTHUR F. WAMMEL,	§	
WAMMEL GROUP, LLC, CARLOS	§	
GOODSPEED a/k/a SEAN PHILLIPS	§	
a/k/a GC d/b/a TOP AGENT	§	
ENTERTAINMENT d/b/a/ MR. TOP	§	
AGENT ENTERTAINMENT,	§	
	§	
Defendants,	§	
	§	
and	§	
	§	
THURMAN P. BRYANT, JR.,	§	
	§	
Relief Defendant.	§	

**RECEIVER’S RESPONSE TO DEFENDANT GARRETT’S MOTION FOR LEAVE,
MOTION TO STRIKE DEFENDANT GARRETT’S SUR-REPLY
AND/OR, IN THE ALTERNATIVE, MOTION FOR LEAVE TO RESPOND**

Jennifer Ecklund, the Court-appointed Receiver (the “**Receiver**”) for Defendants Thurman P. Bryant, III (“**Bryant**”) and Bryant United Capital Funding, Inc. (“**BUCF**”) (Bryant and BUCF, collectively, the “**Bryant Defendants**”) and Defendant Arthur F. Wammel (“**Wammel**”), Defendant Wammel Group, LLC (the “**Wammel Group**”), and Wammel Group Holdings Partnership (“**WGHP**”) (together Wammel, Wammel Group, and WGHP, the “**Wammel Defendants**”) receivership estates (together, the “**Receivership Estate**” or the “**Receivership**”), hereby files Response to *Stephen Garrett’s Motion for Leave to File Late Sur-*

Reply in Excess of Page Limit [Dkt. No. 319],¹ Motion to Strike *Stephen Garrett's Sur-Reply in Opposition to Receiver's Motion to Liquidate Property* [Dkt. No. 320] (the “**Sur-Reply**”) and/or in the Alternative, Motion for Leave to Respond to the Sur-Reply and in support thereof, the Receiver respectfully shows the Court as follows:²

I.
ARGUMENT

A. Ancillary Defendant Garrett's Sur-Reply is procedurally improper.

The Receiver objects to the Sur-Reply. The Sur-Reply constitutes Ancillary Defendant Garrett's second opportunity to respond to the Receiver's Motion to Liquidate Property and Void or Clarify Contract for Deed [Dkt. No. 298] (the “**Motion to Liquidate**”). The Motion to Liquidate was filed on January 24, 2019. The Receiver agreed to and the Court granted an extension for Ancillary Defendant Garrett to respond to the Motion to Liquidate—until March 1, 2019 (the “**Response**”). *See* Dkt. No. 307. Ancillary Defendant Garrett cannot argue that he did not have enough time to respond. Thereafter, the Receiver filed her Reply in Support of the Receiver's Motion to Liquidate Property and Void or Clarify Contract for Deed [Dkt. No. 310] (the “**Reply**”) within the 7-day time limit. Now, *two months* after the Receiver's Reply Ancillary Defendant Garrett seeks leave to file his late Sur-Reply without properly conferring with the Receiver regarding the length of the 37-page brief (more than 25 pages longer than the Reply and over 30 pages longer than the page limit allowed under the Local Rules of this Court).³ Neither

¹ Ancillary Defendant Garrett's counsel communicated that he does not oppose the Receiver's filing of a response to his Motion for Leave after the time limit.

² Capitalized terms not defined herein shall have the same meaning ascribed to them as in the Motion to Liquidate and the Reply.

³ Within the 60 days, Ancillary Defendant Garrett's counsel had ample opportunity to confer with the Receiver's counsel regarding the excess pages but did not do so nor did he provide the Receiver with a copy of the proposed filing.

the Federal Rules of Civil Procedure nor the Local Rules of this Court provide for the filing of a Sur-Reply this late or of this length. Because the Sur-Reply is procedurally improper, the Receiver requests the Court to deny the Ancillary Defendant Garrett's Motion for Leave and/or strike the Sur-Reply.

B. Ancillary Defendant Garrett's Sur-Reply prejudices the Receivership.

In the essence of full candor to the Court, the Receiver's counsel did not oppose Ancillary Defendant Garrett's request for a sur-reply. However, the Receiver never agreed (nor did counsel for Garrett ever mention or discuss) that the proposed sur-reply would be a 37-page brief. Had the Receiver's counsel known of Ancillary Defendant Garrett's intent in regard to the length, an opposition would have been asserted. The 37-page sur-reply is improper not just because Ancillary Defendant failed to properly confer or because it exceeds the allowed page limit. What is more troubling is that the sur-reply allows Ancillary Defendant Garrett to take a second bite at the apple of responding to the Receiver's Motion to Liquidate. The Sur-Reply requires the Receiver to respond to the unfounded and misleading arguments in it.

The Receiver and her counsel also feel the need to mention that it is not their practice to complain about a party's failure to properly confer. However, the circumstances of this briefing required that the Receiver bring this to the Court's attention. There were multiple e-mails and calls with the Receiver's counsel and Ancillary Defendant Garrett's Counsel prior to the filing of the Sur-Reply and the length and breadth of the Sur-Reply was never mentioned. Moreover, the Receiver has made every effort in this case to work with and be accommodating in this case in her dealings with Ancillary Defendant Garrett—providing extensions when requested to discovery, not opposing requests to file additional or late briefing, and allowing late payments to the Receivership for the Property, etc. What is most troubling is that this goodwill and accommodation was taken advantage of in this instance.

The prejudice to the Receivership in allowing the Sur-Reply to stand is significant.

II.
CONCLUSION

For the foregoing reasons, the Receiver respectfully requests this Court to deny Defendant Garrett's Motion for Leave and/or strike the Sur-Reply. In the alternative, the Receiver requests leave to file a short response to the Sur-Reply (attached hereto as **Exhibit A**). The Receiver further requests that this Court grant the Motion to Liquidate, deny the relief requested in the Response, and grant such other and further relief to which she may show herself justly entitled.

Dated: May 31, 2019.

Respectfully submitted,

THOMPSON & KNIGHT LLP

By: /s/ Mackenzie S. Wallace

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COUNSEL TO RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2019, I electronically filed the foregoing document with the Clerk for the United States District Court, Eastern District of Texas. The electronic case filing system (ECF) will send a Notice of Electronic Filing (NEF) to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. The foregoing document will also be sent to all counsel of record via the method identified below.

/s/ Mackenzie S. Wallace

Mackenzie S. Wallace

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CERTIFICATE OF CONFERENCE

Mackenzie M. Salenger, counsel for the Receiver, and counsel for Plaintiff, conferred on May 29, 2019, in compliance with the meet and confer requirement in Local Rule CV-7(h). Counsel for Plaintiff is unopposed to the relief sought in this Motion.

Mackenzie S. Wallace, counsel for the Receiver, and counsel for Ancillary Defendant Garrett, conferred on May 30, 2019, in compliance with the meet and confer requirement in Local Rule CV-7(h). Counsel for Ancillary Defendant Garrett is opposed to the Receiver's Motion to Strike Ancillary Defendant Garrett's Sur-Reply, but is unopposed to the Receiver's late-filing of a response to the Motion for Leave or the Motion for Leave to Respond to Ancillary Defendant Garrett's Sur-Reply.

Mackenzie M. Salenger, counsel for the Receiver, attempted to confer with counsel for the Wammel Defendants on May 29, 2019 and May 30, 2019, in compliance with the meet and confer requirement in Local Rule CV-7(h). Counsel for the Wammel Defendants did not respond regarding whether he is opposed or unopposed to the relief sought in this Motion.

Mackenzie M. Salenger, counsel for the Receiver, and counsel for Carlos Goodspeed conferred on May 29, 2019, in compliance with the meet and confer requirement in Local Rule CV-7(h). Counsel for Carlos Goodspeed is unopposed to the relief sought in this Motion.

/s/ Mackenzie S. Wallace

Mackenzie S. Wallace