

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 19-cv-02594-RM-SKC

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MEDIATRIX CAPITAL INC., *et al.*,

Defendants,

and

MEDIATRIX CAPITAL FUND LTD., *et al.*,

Relief Defendants.

**SEC REPLY IN SUPPORT OF MOTION TO MODIFY ASSET FREEZE TO PERMIT
THE TRANSFER OF FUNDS, INCLUDING CERTAIN DISPUTED FUNDS, FROM
EQUITI UK TO THE RECEIVER**

Plaintiff Securities and Exchange Commission (“SEC”) respectfully submits this Reply in Support of its Motion to Modify Asset Freeze to Permit the Transfer of Funds, Including Certain Disputed Funds, from Equiti Capital UK Limited (“Equiti UK”) to the Receiver (“Motion”). As noted in the Motion, Equiti UK and the Receiver have no objection to the requested relief. Though Defendant Michael Young and Relief Defendant Maria Young filed a Response in Partial Opposition to the Motion and Request for Hearing, *see*. ECF No. 301 (“Opposition”), they primarily attempt to shift the blame from Defendant Young to Equiti for the fraud that was perpetrated on Mediatrix investors and offer no persuasive argument as to why the requested modification should not be granted.

The SEC's Motion seeks a modification of the asset freeze order entered in this case (ECF No. 38) to permit the transfer of \$12,939,858.47 held in the Blue Isle Markets Inc. (St. Vincent & the Grenadines) ("Blue Isle") Equiti UK account to the Court appointed receiver, less an amount equal to one-half of the \$3,513,446.82 negative balance in Blue Isle's Equiti AM account. In other words, the SEC requests an order modifying ECF No. 38 to permit the transfer of \$11,183,135.06 ($\$12,939,858.47 - 1,756,723.41$) to the Receiver. Motion at 3.

The Young's Opposition is premised on the unsupported allegations that the SEC sought to mislead the Court as to the relief requested and that "Equiti UK is the primary wrongdoer." Opposition at 2-6. The SEC's motion made a request to modify the asset freeze to transfer frozen funds held by Equiti UK to the Receiver, allowing Equiti UK to retain half of the disputed set off amount, i.e. \$1,756,723.41. Motion at 3. The request was made after lengthy arms-length negotiations between Equiti and the SEC to resolve the dispute over whether Equiti was entitled to set off the negative balance in Equiti AM account against the positive balance in the Equiti UK account. Inexplicably, the Opposition fails to acknowledge or even address that the set-off dispute involves real risk that this Court – or another Court – will find that the balances should be set-off, which would diminish the corpus of frozen assets by more than \$1.5 million compared to the modification the SEC seeks here. Even were the set-off held to be unenforceable, there would likely be significant time and resources spent to achieve the result.

The proposed resolution, in acknowledgement of those risks, proposes an equitable 50/50 split of the disputed amount. Contrary to the Young's claim of misleading conduct, the SEC's motion explicitly noted that "Equiti's consent to the SEC's request is conditioned on the Court further ordering that the remaining \$1,756,723.41 held in Blue Isle's Equiti UK account may be

released from the Court’s asset freeze to Equiti.” *Id.* Indeed, given the Youngs’ counsel reached out to counsel for Equiti and offered to withdraw their objection if Equiti would pay \$500,000, *see* Ex. A, there appears to be little dispute that the instant modification is appropriate.

The Opposition’s claim that Equiti is the primary wrongdoer also fails to acknowledge that this Court has already found that the SEC “establish[ed] a prima facie case for each of the violations in the Complaint and a strong likelihood that the Commission will prevail at trial on the merits.” ECF No. 38 at 3. If the Youngs believe that Equiti is at fault, they are free to pursue any claims they have against Equiti because there is nothing in the requested relief to preclude any such claims. However, Michael Young’s proclamations of innocence should not a reason to continue this set-off dispute and risk his victims recovering less of their investment.

For these reasons, the SEC’s Motion should be granted.

Respectfully submitted this 18th day of January, 2022.

s/ Stephen C. McKenna
Stephen C. McKenna
Mark L. Williams
Attorneys for Plaintiff
U.S. Securities and Exchange Commission
1961 Stout Street, Suite 1700
Denver, CO 80294-1961
(303) 844-1036
(303) 844-1046
Mckennas@sec.gov
Williamsm@sec.gov

Certificate of Service

I hereby certify that on January 18, 2022, I caused the foregoing to be electronically filed by using the CM/ECF system. I further certify that a copy of the foregoing was served upon the following counsel of record via the Court's CM/ECF system:

Vivian Drohan
Drohan Lee
680 Fifth Avenue
10th Floor
New York, NY 10019
vdrohan@dlkny.com

Jeffrey R. Thomas
Thomas Law LLC
3773 Cherry Creek North Dr., Suite 600
Denver, CO 80209
jthomas@thomaslawllc.com

Attorneys for Defendants Mediatrix Capital Inc., Blue Isle Markets Inc., Blue Isle Markets Ltd., Michael S. Stewart, Bryant E. Sewall, Victoria M. Stewart and Hanna Ohonkova Sewall

Tracy Ashmore
Robinson Waters & O'Dorisio, P.C.
1099 18th St., Ste 2600
Denver, CO 80202
tashmore@rwolaw.com

Attorney for Defendant Michael S. Young, Maria C. Young, Salve Regina Trust, West Beach LLC, TF Alliance LLC, Hase Haus LLC and Casa Conejo LLC

Mark B. Conlan
Natasha M. Songonuga
Gibbons PC
300 Delaware Ave., Suite 1015
Wilmington, DE 19801-1671
nsongonuga@gibbonslaw.com; MConlan@gibbonslaw.com

Attorney to Mark B. Conlan, as Receiver

s/ Nicole L. Nesvig
Senior Litigation Paralegal

From: Henkin, Douglas W. <douglas.henkin@dentons.com>
Sent: Wednesday, December 15, 2021 4:34 PM
To: Senderowitz, Stephen J.
Subject: FW: Equiti - Mediatrix

This email is to memorialize the telephone call that preceded the below email (which is not an accurate reflection of the call from Ms. Ashmore).

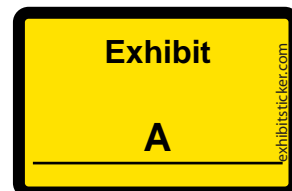
At 4:26pm NY time on December 15, 2021, I received a telephone call from Ms. Ashmore, with whom I had never previously spoken. She told me that she represents Michael Young (although she occasionally referred to “the Youngs,” about which I did not inquire further) but was calling on behalf of all the individual defendants in the SEC’s case against Mediatrix et al. She told me that she was calling about the motion that had been filed by the SEC earlier in the day and about what she called Equiti’s “joinder” in it. I interrupted her to state that she was incorrect, and that the SEC had filed a motion relating to the freeze order to which Equiti consented on the conditions set forth in its 3 paragraph submission, but that Equiti was not a movant and was not “joining” anything. She indicated that she thought that was a joinder in her view, and moved on.

She then stated that all of the defendants in the SEC case intended to object to the motion because in their view Equiti was the primary cause of much, if not all, of the issues raised in the SEC’s case and that it was their view that the SEC should have joined Equiti as a primary defendant in the case against the individual defendants. She stated that the individual defendants believed that Equiti should not be permitted to keep any money from the Blue Isle position liquidations, and that the individual defendants intended to object on this and perhaps other bases (although she did not specify any other bases to object -- in particular, she did not assert that there was no valid setoff right). She then stated that the individual defendants were in different circumstances relating to the criminal case (because Mr. Young had pleaded guilty to making a false statement whereas Mr. Stewart and Mr. Sewall were charged with fraud), whereas they were in similar circumstances in connection with the civil case, but that the effect of the freeze order had been to deny all the individual defendants access to funds to pay counsel to defend them in both cases; she mentioned that an appeal relating to this was pending in the 10th Circuit.

She then said that she believed she could get all the individual defendants to not object to the SEC’s motion if Equiti agreed to pay the individual defendants \$500,000 from the ~\$1.75mm that the SEC’s motion would allow Equiti to keep. During this part of the call she referred to the \$500,000 she was requesting as a payment, not as a “refund,” nor did she assert any basis for a claim that any of the individual defendants might have to money in the Blue Isle account (as opposed to Blue Isle, who she did not claim to represent, having a claim).

She did not mention whether she had discussed her proposal with the SEC, the Receiver, or the DOJ. At no time did she raise FRE 408 or otherwise ask that I treat the discussion as a confidential settlement discussion.

I told her that I would discuss her request with Equiti and respond as soon as I was able.



Douglas W. Henkin

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douglas.henkin@dentons.com
Bio | Website

Dentons US LLP

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From: Ashmore, Tracy
Sent: Wednesday, December 15, 2021 5:09 PM
To: Henkin, Douglas W.
Cc: Vivian R. Drohan ; Ashmore, Tracy
Subject: Equiti - Mediatrix

[WARNING: EXTERNAL SENDER]

Mr. Henkin:

I am just following up on our call earlier today where you agreed to find out if your client would be willing to refund some of the \$1.7 million it is seeking to retain to Msrs. Young, Stewart and Sewall. I have cc'd Vivian Drohan who represents Mr. Stewart and Mr. Sewall. I represent Michael Young.

Thanks and best,

Tracy

Tracy Ashmore
Attorney at Law



1099 18th Street, Suite 2600
Denver, CO 80202

T: 303-824-3126
C: 720-232-8720
E: tashmore@rwolaw.com
Web: www.rwolaw.com

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