

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

MAR 12 2004

JOHN F. CONCORAN, CLERK
BY: DEPUTY CLERK

SECURITIES AND EXCHANGE COMMISSION,)

Case No. 3:01CV00116

Plaintiff,)

v.)

TERRY L. DOWDELL, both individually and)
d/b/a "T.L. Dowdell & Associates,")
BIRGIT MECHLENBURG,)
KENNETH G. MASON,)
DOWDELL, DUTCHER & ASSOCIATES, INC.,)
VAVASSEUR CORPORATION,)
EMERGED MARKET SECURITIES, DE-LLC,)
and DANIEL DEROUARD,)

Defendants,)

MARY DOWDELL, MARCIA DOWDELL,)
REBECCA DOWDELL, ADAM DOWDELL,)
WENDY DOWDELL, DAVID DOWDELL,)
TERRY DOWDELL, JR., NONA PIERCE,)
CYNTHIA PIERCE, STEPHEN PIERCE,)
WILLOWOOD DESIGN CORPORATION,)
and AUTHORIZED AUTO SERVICE, INC.)

Relief Defendants.)

Judge James H. Michael, Jr.

MOTION FOR COURT APPROVAL OF
COMPROMISE AND SETTLEMENT AGREEMENT

COMES NOW Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC
("Receiver") as duly appointed receiver for Terry L. Dowdell; Dowdell, Dutcher &
Associates, Inc.; Emerged Market Securities, DE-LLC; Authorized Auto Services, Inc.;

and Vavas seur Corporation, and files this motion for Court approval of the terms and conditions of a compromise and settlement agreement by and between the Receiver, the United States Securities and Exchange Commission (“SEC”), and Stephen Pierce and Cynthia Pierce (collectively the “Pierces”), and in support there of states:

PROCEDURAL BACKGROUND

1. On April 30, 2002, the SEC filed its First Amended Complaint alleging, *inter alia*, that Stephen Pierce and Cynthia Pierce jointly received \$65,468.74 of Vavas seur funds on May 1, 2000, and that they have no legitimate claim to these funds (the “SEC Proceeding”). *See First Amended Complaint*, ¶¶ 25 & 26, at 6.

2. Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC (“Receiver”) is Receiver for Terry L. Dowdell, Dowdell, Dutcher & Associates, Inc., and Emerged Market Securities, DE-LLC (pursuant to order entered July 12, 2002); for Authorized Auto Services, Inc. (pursuant to order entered September 17, 2002); and for Vavas seur Corporation (pursuant to order entered February 18, 2003), (collectively, the “Receivership Entities”).

3. The Receiver’s duties include recovering Receivership Property for the benefit of defrauded Vavas seur investors. Pursuant to the appointment orders, the Receiver has the powers and duties to bring supplemental legal actions to collect Receivership Property. Subsequent discovery has revealed that the Pierces received additional Vavas seur funds of not less than \$28,611.66.

4. The parties desire to reach a full and final compromise and settlement of all matters and causes of action arising out of the facts and claims set forth in the SEC Proceeding.

PROPOSED COMPROMISE AND SETTLEMENT

5. The Receiver, SEC and Pierces have reached a settlement that, if approved, would compromise and settle this litigation with respect to relief defendants Stephen Pierce and Cynthia Pierce.

6. The terms of the proposed compromise and settlement are set forth in the attached *Compromise and Settlement Agreement*. (Ex. A.)

7. Under the terms of the proposed compromise and settlement agreement, Stephen Pierce and Cynthia Pierce, jointly and severally, agree to pay to the Receiver the sum of Ninety Thousand and 00/100 Dollars (\$90,000.00) within thirty (30) days of execution and delivery of the Agreement to the Receiver and upon the receipt of the settlement funds, the S.E.C. the Receiver, and the Pierces would enter into mutual releases with respect to all claims arising from the subject matter of the SEC Proceeding. Upon approval of the settlement by the Court, and following the consummation of the settlement requirements, the parties will dismiss this civil action with respect to the Pierces.

8. The Receiver requests that the Court enter an order approving the compromise and settlement.

LEGAL STANDARD

9. In evaluating whether to approve a compromise and settlement, the Court must look at various factors and determine whether the compromise is in the best interest

of the estate and whether it is fair and equitable to the creditors of the estate. *In re Frye*, 216 B.R. 166, 177 (Bankr. E.D. Va. 1997) (discussing settlement in bankruptcy context). These factors include: (1) the probability of success in litigation; (2) the potential difficulties, if any, in collection; (3) the complexity of the litigation involved and the expense, inconveniences and delays necessary attending to it; and (4) that paramount interest of the creditors of the estate. *Id.*

10. In the Receiver's business judgment, settlement of this matter is in the best interest of the Receivership Estate because of potential difficulties in collection and the expense, inconvenience and delays of proceeding with the litigation. The settlement payment represents 95% of the claim that the Receiver believes it could prove at trial against the Pierces. The settlement funds are presently in escrow with the Receiver pending the Court's decision on this motion.

11. In light of the above considerations, the Court should approve the proposed compromise and settlement.

WHEREFORE, the Receiver respectfully requests that the Court approve the proposed compromise and settlement, and award to it such other and further relief as may be just and proper.

Respectfully submitted, this the 11th day of March, 2004.

Roy M. Terry, Jr. and DuretteBradshaw, PLC,
Receiver
By Counsel



Douglas Scott, VSB No. 28211
John C. Smith, VSB No. 44556
DuretteBradshaw, P.C.
600 E. Main Street, 20th Floor
Richmond, Virginia 23219
☎ 804.775.6900
📠 804.775.6911

COMPROMISE AND SETTLEMENT AGREEMENT

ROY M. TERRY, JR. and DURRETTEBRADSHAW PLC, RECEIVER FOR: TERRY L. DOWDELL; DOWDELL, DUTCHER & ASSOCIATES, INC.; EMERGED MARKET SECURITIES, DE-LLC; AUTHORIZED AUTO SERVICES, INC.; and VAVASSEUR CORPORATION (“Receiver”); the UNITED STATES SECURITIES AND EXCHANGE COMMISSION (“SEC”); and STEPHEN PIERCE and CYNTHIA PIERCE (collectively “Pierces”) hereby agree that:

SECTION ONE PURPOSE

This Agreement is made as a compromise between the parties for the complete and final settlement of their claims, differences, and causes of action with respect to the dispute described below.

SECTION TWO THE SEC PROCEEDING

The SEC is the plaintiff in Civil Action No. 3:01CV00116, styled *Securities and Exchange Commission, Plaintiff v. Terry L. Dowdell, both individually and doing business as “T. L. Dowdell & Associates,” Birgit Mechlenburg, Kenneth G. Mason, Dowdell Dutcher & Associates, Inc., Vavasseau Corporation, Emerged Market Securities, DE-LLC, and Daniel Derouard, Defendants, Mary Dowdell, Marcia Dowdell, Rebecca Dowdell, Adam Dowdell, Wendy Dowdell, David Dowdell, Terry Dowdell, Jr., Nona*

EXHIBIT

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Pierce, Cynthia Pierce, Stephen Pierce, Willowood Designs Corporation, and Authorized Auto Service, Inc., Relief Defendants (the “SEC Proceeding”), pending before the United States District Court for the Western District of Virginia, Charlottesville Division, the Honorable James H. Michael, Jr. presiding. The complaint, as amended April 30, 2002, alleges that Stephen Pierce and Cynthia Pierce jointly received \$65,468.74 of Vavas seur funds on May 1, 2000, and they have no legitimate claim to these funds. See *First Amended Complaint*, ¶¶ 25 & 26, at 6.

Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC (“Receiver”) is the Receiver for Terry L. Dowdell, Dowdell, Dutcher & Associates, Inc., and Emerged Market Securities, DE-LLC (pursuant to order entered July 12, 2002); for Authorized Auto Services, Inc. (pursuant to order entered September 17, 2002); and for Vavas seur Corporation (pursuant to order entered February 18, 2003), (collectively, the “Receivership Entities”). Pursuant to the appointment orders in the SEC Proceeding, the Receiver has the powers and duties to bring supplemental legal actions to collect Receivership Property. Subsequent discovery has revealed that the Pierces have received directly or indirectly, additional Vavas seur funds, including, but not limited to, \$28,611.66.

The parties desire to reach a full and final compromise and settlement of all matters and causes of action arising out of the facts and claims set forth in the SEC Proceeding.

SECTION THREE
TERMS OF SETTLEMENT

In consideration of the mutual covenants set forth, the parties agree as follows:

(a). Stephen Pierce and Cynthia Pierce, jointly and severally, agree to pay to the Receiver the sum of Ninety Thousand and 00/100 Dollars (\$90,000.00) within thirty (30) days of execution and delivery of this Agreement to the Receiver. In the event that either the Court or the SEC disapprove of this Agreement, Receiver shall repay such sum to the Pierces.

(b). For and in consideration of the mutual promises between the parties, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which is hereby acknowledged, the Pierces do hereby release acquit and forever discharge the Receiver and the SEC, and their successors, assigns, officers, agents, attorneys and employees, of and from any and all claims, demands, damages, actions, or causes of action of any kind whatsoever arising from the subject matter of the SEC Proceeding.

(c). For and in consideration of the payments described herein by the Pierces to the Receiver, the mutual promises between the parties, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which is hereby acknowledged, the Receiver does hereby release acquit and forever discharge the Pierces, and any successors, assigns, and agents, of and from any and all claims, demands, damages, actions, or causes of action of any kind whatsoever arising from the subject matter of the SEC Proceeding, *provided, however*, that should at some later time it be determined by

the Court that the Pierces possessed money or property traceable to the Vavas seur Investors at the time of the execution of this Agreement, or that he or she later came into possession of money or property traceable to the Vavas seur Investors, the Court may declare this Agreement null and void.

(d). For and in consideration of the payments described herein by the Pierces to the Receiver, the mutual promises between the parties, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which is hereby acknowledged, the SEC does hereby release acquit and forever discharge the Pierces, and any successors, assigns, and agents, of and from any and all claims, demands, damages, actions, or causes of action of any kind whatsoever arising from the subject matter of the SEC Proceeding, *provided, however*, that should at some later time it be determined by the Court that the Pierces possessed money or property traceable to the Vavas seur Investors at the time of the execution of this Agreement, or that he or she later came into possession of money or property traceable to the Vavas seur Investors, the Court may declare this Agreement null and void.

SECTION FOUR AGREEMENT CONDITIONED ON COURT APPROVAL

It is understood that this Agreement shall not be binding on any of the parties until it has been approved by the Court. If the Court or SEC shall fail or refuse to approve the Agreement, it shall become null and void and without any force or effect, and none of the parties shall be bound by it.

SECTION FIVE
MISCELLANEOUS

(a). Receiver warrants that it is a federal equity receivership duly appointed by James H. Michael, Jr., Senior United States District Court Judge, by orders entered on July 12, 2002, September 17, 2002, and February 18, 2003 and, pursuant to the appointment orders, has full power and authority to enter into this Agreement, and that it's signatory to this Agreement is authorized to execute this agreement on behalf of the Receiver.

(b). SEC warrants that it has full power and authority to enter into this Agreement, and that it's signatory to this Agreement is authorized to execute this agreement on behalf of the Receiver.

(c). The Pierces acknowledge receipt of a copy of the Summons and First Amended Complaint filed by the SEC in this action, and admit the jurisdiction of this Court over them.

(d). This Agreement shall be interpreted, construed, and enforced pursuant to the laws of the Commonwealth of Virginia, irrespective of its choice of law rules. The exclusive forum for any litigation with respect to this agreement shall be the United States District Court for the Western District of Virginia, Charlottesville Division.

(e). When the context in which words are used in this agreement indicates that such is the intent, words in the singular number shall include the plural, and vice versa, and words in the masculine gender shall include the feminine and neuter genders, and vice

versa. Each party hereto has had equal opportunity to negotiate and seek legal advice regarding the terms hereof and no provision alleged to be ambiguous shall be construed for or against any party based on the identity of the draftsman of that provision.

(f). In the event that any provisions of this agreement shall be held to be invalid, the same shall not affect, in any respect whatsoever, the validity of the remainder of this agreement.

(g). This Agreement embodies the entire agreement of the parties respecting the subject matter. There are no promises, terms, conditions, or obligations other than those contained in the Agreement. This document supercedes all previous communications, representations, or agreements, either verbal or written, between the parties.

(h). No change or modification to the agreement shall be valid unless in writing and signed by the parties.

(i). This Agreement may be executed in several counterparts and all so executed shall constitute one agreement, binding on all the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

(j). A facsimile signature shall be treated as an "original" signature for all purposes of this Agreement.

(k). The parties agree to execute such other and further documents as may be reasonably necessary to effectuate the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be effective this ____ day of February, 2004.

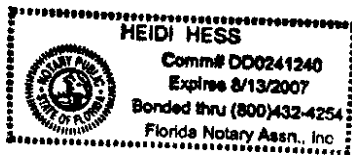
By: Stephen Pierce
Stephen Pierce

STATE OF FLORIDA
CITY/COUNTY OF HILLSBOROUGH, to-wit:

The foregoing document was executed by Stephen Pierce before me, a Notary Public for the aforesaid jurisdiction, this 4th day of March, 2004.

My commission expires:

Heidi Hess
Notary Public



By: Cynthia Pierce
Cynthia Pierce

STATE OF FLORIDA
CITY/COUNTY OF HILLSBOROUGH, to-wit:

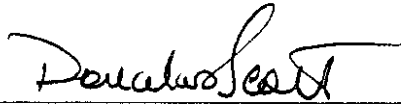
The foregoing document was executed by Cynthia Pierce before me, a Notary Public for the aforesaid jurisdiction, this 4th day of March, 2004.

My commission expires:

Heidi Hess
Notary Public



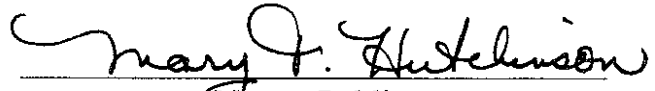
Roy M. Terry, Jr. and DuretteBradshaw PLC,
Receiver for: Terry L. Dowdell; Dowdell,
Dutcher & Associates, Inc.; Emerged Market
Securities, DE-LLC; Authorized Auto Services,
Inc.; and Vavasseur Corporation

By: 
Douglas Scott, VSB No. 28211
DuretteBradshaw, PC

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

The foregoing document was executed before me, a Notary Public for the
aforesaid jurisdiction, this 20th day of February, 2004 by Douglas Scott.

My commission expires:
09/30/07


Notary Public

U. S. Securities and Exchange Commission

By: _____
Steven J. Levine

STATE OF ILLINOIS
COUNTY/CITY OF _____, to-wit:

The foregoing document was executed before me, a Notary Public for the
aforesaid jurisdiction, this _____ day of _____, 2004 by Steven J. Levine.

My commission expires:

Notary Public

Dutcher & Associates, Inc.; Emerged Market Securities, DE-LLC; Authorized Auto Services, Inc.; and Vavas seur Corporation

By: _____
Douglas Scott, VSB No. 28211
DuretteBradshaw, PC

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

The foregoing document was executed before me, a Notary Public for the aforesaid jurisdiction, this _____ day of _____, 2004 by Douglas Scott.

My commission expires:

Notary Public

U. S. Securities and Exchange Commission

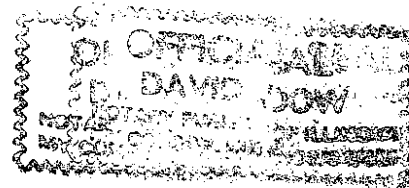
By: _____
Steven J. Levine

STATE OF ILLINOIS
COUNTY/CITY OF Carh, to-wit:

The foregoing document was executed before me, a Notary Public for the aforesaid jurisdiction, this 18th day of February, 2004 by Steven J. Levine.

My commission expires: June 4, 2005

David J Medlar
Notary Public



CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of March, 2004, a true copy of the foregoing Motion was mailed by first class mail, postage fully prepaid, addressed to:

Stephen Pierce
5285 63rd Street North
St. Petersburg, FL 33709
Relief Defendant

Cynthia Pierce
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St. Petersburg, FL 33709
Relief Defendant

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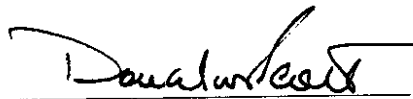
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Douglas Scott