

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

SECURITIES AND EXCHANGE)	CASE NO. 3:01CV00116
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	
TERRY L. DOWDELL, et al.)	
)	
Defendants.)	JUDGE JAMES H. MICHAEL, JR.
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**RECEIVER’S MOTION FOR ORDER
APPROVING ACCORD AND SATISFACTION WITH
TIMOTHY PIERCE AND CYNTHIA PIERCE**

NOW COMES Roy M. Terry, Jr. and the law firm of DuretteBradshaw PLC (“Receiver”), and respectfully moves the Court to enter an order authorizing the Receiver to compromise this Court’s judgment against Timothy Pierce and Cynthia Pierce and to contemporaneously enter an order in a companion case, *Receiver v. Crowley*, Case No. 3:03cv00091 (W.D. Va.), approving a settlement with Earl R. Crowley and Theresa R. Crowley, and in support thereof, respectfully represents to the Court as follows:

BACKGROUND

1. On April 30, 2002, the Securities and Exchange Commission (“SEC”) filed its First Amended Complaint against the Defendants and Relief Defendants.

2. The complaint alleges, *inter alia*, that Terry Dowdell defrauded investors out of millions of dollars that he used to pay his business and personal expenses, including transfers to his marketers, business associates, family and friends.

3. 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 Vavasieur Corporation (pursuant to order entered February 18, 2003), (collectively, the “Appointment Orders”).

4. The Appointment Orders authorized the Receiver to bring such legal actions as it deems necessary or appropriate in discharging its duties as Receiver or on behalf of investors whose interests it is protecting.

Timothy & Cynthia Pierce

5. On May 20, 2003, the Receiver filed its complaint against the Pierces. The Complaint alleges, *inter alia*, that on or about June 5, 2001, Terry Dowdell wire-transferred Eighty-six Thousand Dollars (\$86,000.00) to Timothy Pierce (Terry Dowdell’s brother-in-law) and/or Cynthia Pierce (Timothy Pierce’s spouse), which they used to pay-off a mortgage on their residence.

6. On October 16, 2003, the Receiver filed a Motion for Partial Summary Judgment (the “Motion”). Hearing was held November 20, 2003 on the Motion. Ruling from the bench, the Court granted the Motion.

7. On January 22, 2004, the Court entered Partial Summary Judgment on the Motion (the “Judgment”),¹ and on April 8, 2004, entered an order dismissing the case.

8. During November and December of 2003 (after the Court granted judgment but before the Court entered an order), the Pierces made substantial draws on their home equity line of credit (including a \$30,000.00 cash withdrawal), thereby materially depleting the equity in their residence from which a judgment might be collected. The Pierces are highly leveraged, with little net worth, and have repeatedly threatened the Receiver with bankruptcy.²

9. The Receiver believes that it might be able to collect as much as \$45,000.00 from the Pierces’ property in Florida, but would accrue substantial litigation expenses doing so.

¹ The order entered January 22, 2004, adjudged, ordered and decreed as follows:

(1) the Plaintiff’s Motion For Partial Summary Judgment, filed October 16, 2003, shall be, and it hereby is, GRANTED;

(2) judgment is entered in favor of the Roy M. Terry, Jr. and DuretteBradshaw PLC against Timothy M. Pierce and Cynthia L. Pierce, jointly and severally, in the amount of Eighty Six Thousand Dollars (\$86,000.00) is GRANTED;

(3) Roy M. Terry, Jr. and DuretteBradshaw PLC hold an equitable lien pursuant to Florida Statute § 726.108(1)(b) against the funds transferred and all other property of the transferee now owned or hereafter acquired in accordance with applicable law; and

(4) Roy M. Terry, Jr. and DuretteBradshaw PLC hold an equitable lien under the doctrine of equitable subrogation in the amount of \$48,988.11, superior to any claim of Timothy M. Pierce and/or Cynthia L. Pierce, on [the Pierces’ principal residence].

² Timothy Pierce is no stranger to bankruptcy, having filed chapter 7 bankruptcy several years ago.

Earl & Theresa Crowley

10. On October 16, 2003, the Receiver filed its complaint against Theresa Crowley (Terry Dowdell's sister-in-law and Timothy Pierce's sister) and Earl Crowley (Theresa Crowley's spouse) (collectively the "Crowleys").

11. On February 13, 2004, the summons and complaint were served on the Crowleys.

12. On March 2, 2004, the Receiver received an e-mail from Theresa Crowley that admitted they had received more money from Terry Dowdell than the Receiver had alleged in the Complaint.

13. Based upon those admissions, the Receiver filed an amended complaint against the Crowleys for recovery of One Hundred Twenty Four Thousand Two Hundred Dollars (\$124,200.00).

14. On March 3, 2004, the amended complaint was served on the Crowleys.

15. The Crowleys failed to timely answer or otherwise plead or appear with respect to the amended complaint. The Receiver therefore filed a Motion for Entry of Default and Default Judgment (the "Motion for Default Judgment").

16. Hearing on the Motion for Default Judgment, originally scheduled for May 12, 2004, was continued pending approval of a proposed settlement with the Pierces and the Crowleys.

JOINT SETTLEMENT OFFER

17. The Pierces and Crowleys have proposed a joint settlement offer to the Receiver, the terms of which are set forth in the attached *Agreement for Accord and*

Satisfaction (“Pierce Agreement”) (Ex. A.) and the *Compromise and Settlement Agreement* (“Crowley Agreement”) (Ex. B.). In summary, the settlement terms are as follows:

(a) Pierce Agreement. The Pierces will pay the Receiver a lump-sum cash payment in the amount of Thirty Thousand Dollars (\$30,000.00) in full satisfaction of the amount due on the Judgment. This agreement is expressly contingent upon the complete performance by the Crowleys of the terms of a settlement between the Receiver and the Crowleys;

(b) Crowley Agreement. The Crowleys will deed their residence and associated lot or lots to the Receiver in full satisfaction of any and all of the Receiver’s claims, demands, damages, actions, or causes of action of any kind whatsoever against them arising from the subject matter of the Lawsuit,³ and

(c) Receiver’s Duties. Upon full performance of their responsibilities by the Pierces and the Crowleys under their respective settlement agreements, the Receiver will have the Judgment against the Pierces marked “Satisfied” and will dismiss the Lawsuit pending in this Court against the Crowleys “with prejudice.”

18. By deed dated July 1, 2004, the Crowleys transferred to the Receiver *in escrow* pending the approval of the *Compromise and Settlement Agreement* by the Court all their interest in certain real property commonly known as 6489 49th Avenue North, St. Petersburg, Florida, and more particularly described as

³ The Crowley’s residence has an estimated fair market value on \$160,000.00, less pay-off of first mortgage held by BB&T Mortgage (payoff is \$44,184.81 as of July 12, 2004, plus interest accruing at \$8.85 per day thereafter).

Lots 12 and 12A, Dixie Crossing, according to the plat thereof, as recorded in Plat Book 116, Page 48, of the Public Records of Pinellas County, Florida.

(the “Property”).

RELIEF REQUESTED

19. Because *Receiver v. Pierce*, 3:03CV00046 (W.D. Va.) has been dismissed, the Receiver requests the Court enter the proposed order regarding the Pierce Agreement in this SEC Proceeding. (Ex. C –proposed Order for Pierce Agreement.) Alternatively, the Court may reopen the Pierce case, enter the proposed order, and close the case again.

20. Because *Receiver v. Crowley*, 3:03CV00091 (W.D. Va.) is pending before the Court, the Receiver requests the Court enter the proposed order (Ex. D – proposed Order for Crowley Agreement) (i) approving the Crowley Agreement, (ii) authorizing the sale of the Property by public auction in accordance with 28 U.S.C. § 2001(a) and to give notice of such sale in accordance with 28 U.S.C. § 2002, and (iii) authorizing the employment of a auctioneer to conduct the sale upon the terms and conditions substantially set forth in the proposed Contract (Ex. E – auction contract).

LEGAL STANDARD

21. 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.*

22. The Receiver believes in its best business judgment that the proposed accord and satisfaction with the Pierces is in the best interest of the Receivership Estate because of the potential difficulties and expense of attempting to collect a judgment against the Pierces. Collection of the Judgment would require the employment of Florida counsel and the Receiver's ability to defeat the Florida homestead exemption is not without question. Were the Pierces to file the threatened bankruptcy, additional counsel fees would accrue.

23. The Receiver also believes in its best business judgment that the proposed compromise and settlement with the Crowleys is in the best interest of the Receivership Estate because of the potential difficulties in collecting a judgment against them. Like the Pierce situation, the expense of Florida counsel and uncertainty about the effect of the Florida homestead suggests that collection of a judgment from the Crowleys could prove problematical. Their residence is the only substantial asset that the Crowleys possess.

24. In light of the above considerations, the Court should approve the proposed Pierce Agreement and Crowley Agreement.

WHEREFORE, the Receiver respectfully requests that the Court enter an order authorizing and approving the Receiver to accept payment from the Pierces of a lesser sum than the whole amount due on this Court's judgment, in full discharge of the whole amount due; contemporaneously enter an order in an ancillary case, *Receiver v. Crowley*, Case No. 3:03CV00091 (W.D. Va.), (i) approving the compromise and settlement with

Earl Crowley and Theresa Crowley, (ii) authorizing the sale of certain real property formerly occupied by Earl R. Crowley and Theresa Crowley, and (iii) authorizing the employment of a auctioneer to conduct the sale; and granting such other and further relief as may be just and proper.

Respectfully submitted, this the 15th day of July, 2004.

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

\s\ Douglas Scott

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John C. Smith, VSB No. 44556

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July 2004, a true copy of the foregoing Motion was delivered by electronic means and/or mailed first class mail, postage fully prepaid, addressed to:

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/s/ Douglas Scott

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