

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:

TELEXFREE, LLC,
TELEXFREE, INC. and
TELEXFREE FINANCIAL, INC.,

Debtors.

STEPHEN DARR, LIQUIDATING TRUSTEE
OF THE CHAPTER 11 ESTATES OF EACH
OF THE DEBTORS,

Plaintiff,

v.

CARLOS WANZELER, et al
Defendants.

Chapter 11 Cases

14-40987-MSH
14-40988-MSH
14-40989-MSH

Substantively Consolidated

Adversary Proceeding
No. 16-4032

**STIPULATION OF SETTLEMENT BETWEEN THE LIQUIDATING TRUSTEE
AND JAMES MERRILL**

This Stipulation of Settlement ("Stipulation") is entered into this 4th day of October, 2022 by and between Stephen B. Darr, the duly appointed Liquidating Trustee (the "Trustee") of the substantively consolidated bankruptcy estates ("Estates") of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors") and James Merrill ("Merrill").

RECITALS

1. On April 13, 2014 (the "Petition Date"), the Debtors filed voluntary Chapter 11 petitions with the United States Bankruptcy Court for the District of Nevada.
2. By order dated May 6, 2014, the Nevada Bankruptcy Court approved a motion to change venue filed by the Securities and Exchange Commission ("SEC"). The cases were transferred to this Court on May 9, 2014.



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3. On May 30, 2014, the Court approved the motion of the Office of the United States Trustee to appoint a Chapter 11 trustee, and Stephen Darr was appointed as the Chapter 11 Trustee on June 6, 2014.

4. The principals of TelexFree were initially Merrill, Carlòs Wanzeler (“Wanzeler”) and Carlos Costa (“Costa” and, collectively, the “Principals”).

5. The Debtors ostensibly operated a “multi-level marketing” company with its headquarters in Marlborough, Massachusetts. It represented itself as being in the business of selling telephone service plans that use “voice over internet protocol” technology. The Trustee has asserted that the sale of VoIP, however, constituted only a minor portion of their business, and that the Debtors’ actual business was the recruitment of participants. Merrill has denied that was the case.

6. On November 25, 2015, the Court, on motion by the Trustee and after notice, entered an Order, as amended on December 21, 2015, finding that the Debtors were engaged in a Ponzi scheme and that this ruling was the law of the case in each of the jointly administered cases.

7. On July 9, 2020, the Court entered an order confirming the *First Amended Liquidating Plan of Reorganization of Stephen Darr, Chapter 11 Trustee of TelexFree LLC, TelexFree Inc., and TelexFree Financial, Inc.* The plan became effective on July 14, 2020. Stephen Darr was appointed liquidating trustee under the confirmed plan. The plan resulted in the substantive consolidation of the Debtors.

8. On or about April 1, 2016, the Trustee commenced this adversary proceeding against the Principals and certain individuals who were related to the Principals or who the Trustee alleged facilitated the implementation of the scheme.

9. In December 2013, TelexFree paid the Principals approximately \$10,000,000, including \$3,000,000 to Merrill, \$3,500,000 to Wanzeler, and \$3,500,000 to Costa (collectively, the “Transfers”). The Trustee sought to recover the Transfers, as well as certain other payments made to the Principals within two years of the Petition Date, as being actual and/or constructively fraudulent transfers under the Bankruptcy Code. The Trustee asserted additional claims against the Principals for breach of fiduciary duty, looting, and civil conspiracy.

10. The United States of America commenced a criminal action against Merrill and Wanzeler in 2014 in the United States District Court for the District of Massachusetts (no. 14-CR-40028, the “Criminal Action”). Merrill pled guilty on one count and was sentenced to six years in prison.

11. In connection with the Criminal Action, the United States froze all funds held by Merrill and his spouse Kristin Merrill at Waddell & Reed Financial Advisors and Middlesex Savings Bank. Pursuant to the plea agreement between Merrill and the United States entered into in October 2016 in the Criminal Action (the “Plea Agreement”), Merrill agreed to the forfeiture of all funds on deposit in the Waddell & Reed accounts. As of September 30, 2018, all of the foregoing funds on deposit at Waddell & Reed, totaling \$4,362,622.18, had been seized and forfeited to the United States Treasury and on June 19, 2019 the United States Treasury turned over \$145,471,295.53 to the Trustee.

12. In the Plea Agreement the government expressly excluded from forfeiture retirement funds seized by the government from Middlesex Savings Bank totaling \$115,631.64. These funds were seized, in their entirety, by the Internal Revenue Service (“IRS”) in July 2017.

13. The IRS has asserted the following claims against Merrill and Kristin Merrill:

- (i) Notice of Federal Tax Lien in the amount of \$1,796,52.58 against Merrill and Kristin Merrill relating to calendar year 2013 and recorded at the Registry of Deeds, Southern Middlesex County ("Registry") on August 19, 2015;
- (ii) Notice of Federal Tax Lien in the amount of \$1,224,639.56 against Merrill relating to calendar year 2014 and filed at the Registry;
- (iii) Notice of Federal Tax Lien in the amount of \$26,545.31 against Merrill relating to calendar year 2015 and filed at the United States District Court;
- (iv) Notice of Federal Tax Lien in the amount of \$91,727.01 against Kristin Merrill relating to calendar years 2016 and 2017 and filed at the Registry on October 18, 2018;
- (v) Notice of Federal Tax Lien in the amount of \$47,638.41 against Merrill relating to calendar years 2017 and 2018 and filed at the United States District Court.

14. The Massachusetts Department of Revenue ("DOR") has made an assessment against Merrill in the amount of \$22,766.01. Merrill has entered into a payment agreement with the DOR for the sum of \$100 per month with respect to such obligation.

15. The DOR has made an assessment against Kristin Merrill in the amount of \$16,275.05. Kristin Merrill has entered into a payment agreement with the DOR for the sum of \$100 per month with respect to such obligation.

16. The Plea Agreement excluded from forfeiture the residential real property owned by Merrill and Kristin Merrill, as tenants by the entirety, and located at One Coburn Drive, Ashland, Massachusetts (the "Residence"). The Residence has a Zillow assessment of \$815,000 and is subject to a first mortgage in the estimated amount of \$131,000 and the lien of the IRS in

excess of \$1,000,000. The Merrills filed a declaration of homestead on or about January 15, 2002.

17. Merrill has alleged that he has no assets available to satisfy a judgment in favor of the Trustee and that, in addition to the claims asserted by the IRS and DOR, Merrill has unpaid obligations for professional fees and loans made to him by private third parties.

18. The Trustee and Merrill have engaged in negotiations over the past several weeks in an effort to resolve the Trustee's claims in this action. As a result of these negotiations, the parties have agreed to the terms of this Stipulation.

Stipulation of Settlement

A. Judgment shall enter in favor of the Trustee against Merrill on Count Four (breach of fiduciary duty) in the amount of \$3,000,000 (the "Judgment Amount"). All other Counts shall be deemed dismissed as against Merrill, with prejudice.

B. Any funds collected by the Trustee from either Wanzeler or Costa on account of claims by the Trustee against either or both of them shall reduce the Judgment Amount by a sum equal to fifty percent (50%) of any amounts so recovered. The Trustee shall from time to time, upon reasonable request, advise Merrill of the status of collection efforts against Wanzeler and Costa.

C. Notwithstanding the provisions of paragraph B, the Trustee may recover the full amount of the then-outstanding Judgment Amount against Merrill and shall not be required to seek recovery, first, from either Wanzeler or Costa. In the event the Trustee shall recover some or all of the Judgment Amount from Merrill and subsequently recover amounts from either Wanzeler or Costa, Merrill shall not be entitled to any refund against amounts already paid to the Trustee.

D. This Stipulation shall be binding upon and inure to the benefit of the Parties, and their respective administrators, representatives, successors heirs, and assigns.

E. This Stipulation constitutes the complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral or written, between the Parties with respect to such subject matter.

F. This Stipulation shall be governed by and construed in accordance with the Bankruptcy Code (11 U.S.C. § 101 *et seq.*) and the substantive law of the Commonwealth of Massachusetts and shall have the force and effect of an instrument executed and delivered under seal under the laws of the Commonwealth of Massachusetts.

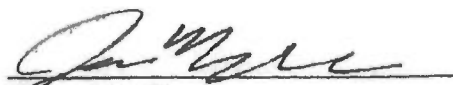
G. This Stipulation may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument. This Stipulation may be executed by facsimile or portable document format (“pdf”).

H. Each party represents and warrants that it has had an opportunity to fully review the provisions of this Stipulation with attorneys of its own choice as a result of which the Parties hereto acknowledge and agree (a) that any rule of law that provides that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Stipulation and (b) that each party signing this Stipulation is entering into this Stipulation knowingly, voluntarily and of its own free will.

I. The Court shall retain jurisdiction to resolve any dispute arising under or in connection with this Stipulation.

J. This Stipulation shall have no force or effect unless it is approved by the Court.


Stephen Darr, Trustee


James Merrill

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