

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-13648-smb

4 Adv. Case No. 19-01448-smb

5 - - - - - x

6 In the Matter of:

7  
8 WAYPOINT LEASING HOLDINGS LTD.

9  
10 Debtor.

11 - - - - - x

12 WILLIAM TRANSIER, AS PLAN ADMINISTRATOR FOR WAYPOINT

13 Plaintiff,

14 v.

15 SUNTRUST BANK, ET AL

16 Defendants.

17 - - - - - x

18  
19 United States Bankruptcy Court

20 One Bowling Green

21 New York, NY 10004

22  
23 January 16, 2020

24 10:36 AM

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1 B E F O R E :

2 HON STUART M. BERNSTEIN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: MATTHEW

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1 HEARING re Pre-Trial conference

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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19 BY: DAVID WENDER

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1 P R O C E E D I N G S

2 THE COURT: Transier v. SunTrust. I entered a  
3 scheduling order in this one, and had you written, I would  
4 have adjourned it. But since you're here, apparently  
5 someone was overpaid? That's what this case is about?

6 MR. KLEPPER: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. KLEPPER: Good morning. Steven Klepper and  
9 David Gold, from Cole Schotz, on behalf of William Transier  
10 as Plan Administrator for Waypoint.

11 Pursuant to a sale order that this Court entered  
12 in February 2019, substantially all the assets of Waypoint  
13 were sold to Macquarie. There's a formula laid out in the  
14 sale order as to how the assets would then be -- I mean,  
15 the proceeds of the sale would be distributed amongst the  
16 secured lenders.

17 Calculations were done leading up to the sale, the  
18 closing of the sale, as to how much each of the secured  
19 lender groups would receive. A calculation done as to WAC  
20 7, which is this group of Defendants, was they would get  
21 approximately \$36 million from the sale proceeds and then  
22 excess cash in the cash collateral account, once you held  
23 back certain withholdings and holdbacks, came out to X. It  
24 was estimated to be about \$4 million. That number, together  
25 with the \$36 million was about \$40 million. That was

1 circulated. That was approved.

2 And then when the sale happened, they actually  
3 went and calculated the actual cash balance in the cash  
4 collateral account -- the actual excess cash balance -- and  
5 it was about \$2,700 less than what had been estimated; still  
6 around the \$4 million number. And erroneously, the actual  
7 excess cash balance was added to the estimated excess cash  
8 balance, instead of substituted --

9 THE COURT: So somebody made a mistake and wrote a  
10 check that was too big.

11 MR. KLEPPER: And so they got \$44 million instead  
12 of \$40 million. So when we found out the error, we said,  
13 you know, our bad. Here's the calculation. Here's the  
14 breakdown. That money belongs to all the creditors. It was  
15 erroneously paid to you; please pay it back. And they said,  
16 no, we're not going to do that.

17 MR. WENDER: Good morning, Your Honor. David  
18 Wender, of Alston & Bird, here on behalf of Sun Trust, as  
19 agent for the WAC 7 facility. And Your Honor, I agree that  
20 there was a distribution. And there is a distribution in  
21 connection with the sale.

22 THE COURT: Do you think you got the right amount,  
23 they made a mistake, and it's tough luck?

24 MR. WENDER: Your Honor, let me be clear. I don't  
25 know what amount is right. And that's one of the problems

1 with this case, is that when we had the discussions, it went  
2 over a period of months, and what would be distributed, we  
3 received several iterations. And each time we reached out  
4 to counsel --

5 THE COURT: Assuming you agree on the number, if  
6 it turns out you're overpaid, are you going to return the  
7 overpayment, or are you going to say tough luck?

8 MR. WENDER: Well, I would say tough luck, Your  
9 Honor --

10 THE COURT: Okay.

11 MR. WENDER: -- and let me tell you why. And the  
12 reason why, Your Honor, is twofold. First of all, in the --  
13 first of all, let's back up. In the distribution model that  
14 we received, there were two lines that showed excess cash  
15 and what would be distributed to the lenders. And there was  
16 actually line items for both excess cash collateral, and  
17 which the number was \$4 million and change; there also was a  
18 separate line that said distribution to WAC 7 lenders of \$40  
19 million.

20 And so in connection with the distribution, we  
21 received two sets of wires. And because -- we told them we  
22 disagreed, we should get all of our excess cash, and they  
23 said no, and that was a constant theme in this case.  
24 Myself, Your Honor, reached out to counsel to say, why did  
25 we get the extra set of wires? Counsel for Houlihan Lokey

1 forwarded me the communication, excess cash collateral they  
2 were entitled to; it's yours. We filed our proof of claim,  
3 laid out exactly what we received. Those numbers were  
4 included in our proof of claim. They were on our ballots  
5 when we voted in connection with the plan, fully laid out to  
6 the Debtors. And we negotiated and obtained a release. And  
7 the reason why a release was important, because we never  
8 trusted the Debtors' numbers.

9 THE COURT: Oh, you got a release in this case?

10 MR. WENDER: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. WENDER: The WAC 7 agent and all but one of  
13 the WAC 7 lenders got a release under the plan. And so,  
14 Your Honor, and we come back today in the motion  
15 (indiscernible). You know, we did an accounting, and the  
16 estate didn't distribute \$4 million that we're entitled to.  
17 I think we all can recognize the Debtors could say, well,  
18 look, you gave us a release; this is done. That's why we do  
19 releases --

20 THE COURT: Okay.

21 MR. WENDER: -- so we can all move on. And we  
22 received a release here. And that's -- and we laid this out  
23 -- I provided the Plan Administrator, who was there and  
24 actually opined on the releases in connection with  
25 confirmation. We don't think this --



1 THE COURT: Are you saying the release -- I don't  
2 mean to interrupt, but --

3 MR. WENDER: Yeah.

4 THE COURT: Are you saying the release is a  
5 complete defense?

6 MR. WENDER: It is, Your Honor.

7 THE COURT: So make a motion for summary judgment.  
8 Okay. On the issue of the release.

9 MR. WENDER: Yes, Your Honor, it's...

10 THE COURT: All right. Thanks.

11 MR. WENDER: Thank you, Your Honor.

12 MR. KLEPPER: Thank you, Judge.

13 THE COURT: Well, I guess you could make a motion  
14 to dismiss, even though the release is not mentioned. But I  
15 think if you have documentary evidence like that --

16 MR. WENDER: And that's the question, Your Honor.  
17 We could do it as a motion to dismiss, but we already did  
18 that.

19 THE COURT: It's the same --

20 MR. WENDER: (indiscernible)

21 THE COURT: It's the same motion, really.

22 MR. WENDER: It is, Your Honor. It's just a  
23 matter of what -- can we introduce the plan or the release?

24 THE COURT: Well, I can take judicial notice of  
25 the plan.

1 MR. WENDER: There's a few judges will take  
2 judicial notice that there was a --

3 THE COURT: So make a motion for summary judgment.

4 MR. WENDER: Thank you, Your Honor.

5 THE COURT: That's the issue. All right.

6 MR. KLEPPER: Judge, we have a briefing schedule  
7 right now laid out for an anticipated motion to dismiss.  
8 Would this -- is the Court's --

9 THE COURT: But it's the same issue. Well, do you  
10 need more time to make your motion?

11 MR. WENDER: Your Honor, I'm not sure that we do.  
12 We're actually in contact with the Plaintiff about maybe  
13 deferring the briefing schedule. Let us confer, and if we -  
14 - as it stands, I will represent that our motion for summary  
15 judgment would be due at the same time as our motion to  
16 dismiss because it's the same issue that we're going to  
17 raise therein. But let's talk about --

18 THE COURT: Why don't the two of you talk. It  
19 sounds like a very straightforward motion for summary  
20 judgment, as long as it's limited to the release. I don't  
21 have to hear all this other stuff about mistakes. You say,  
22 assuming they made a mistake, that's too bad because we got  
23 a release. That's basically what your argument is. I don't  
24 know if the release covers this payment.

25 MR. KLEPPER: Our position is it doesn't, Your

1 Honor.

2 THE COURT: All right. Then I'll deny the motion  
3 and we'll go from there. All right. Thanks.

4 (Whereupon these proceedings were concluded at  
5 10:43 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: April 17, 2020

[& - et]

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