Docket #0269 Date Filed: 8/21/2014

UNITED STATES BANKRUPTCY
DISTRICT OF MASSACHUSETTS

IN RE TELEXFREE, LLC Debtor,	)	Chapter 11 Case No. 14-40987 MSH
ANTHONY CELLUCCI, JAMILLY LAKE AND GERIVALDO PACHECO – Putative Claims Representatives and Those Similarly Situated, Plaintiffs, v. TELEXFREE, INC., et al. Defendants.	)	Adversary Proceeding No. 14-04057 MSH

MIDDLESEX SAVINGS BANK'S LIMITED OPPOSITION TO THE TRUSTEE'S MOTION TO STAY THE ACTION

Defendant Middlesex Savings Bank ("Middlesex Savings") hereby submits this Limited Opposition to the Trustee's Motion to Stay the Action. In support of its Opposition, Middlesex Savings states as follows:

The instant action is one of six substantively identical complaints filed by various plaintiffs seeking damages arising out of an alleged Ponzi pyramid scheme perpetrated by TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. and related entities. In addition to this complaint, a second adversary proceeding has been filed in this Court and is captioned as Martin et al, on behalf of herself and all others similarly situated v. Telexfree et al., Civil Action

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No. 1:14-04044 (D. Mass.). Four other actions have been filed in various federal district courts as follows:

- Ferguson et al. v. Telexelectric, LLLP et al., Civil Action No. 5:14-cv-00316-D (Eastern District of North Carolina);
- Cook, on behalf of himself and all other similarly situated v. TelexElectric, LLLP, et al., Civil Action No. 2:14-cv-00134 (Northern District of Georgia);
- Reverend Jeremiah Githere, et al. v. TelexElectric, LLP, et al., Civil action No. 14-12825 (D. Mass.);
- Guevara v. Merrill, et al., Civil Action No. 1:14-cv-22405 (Southern District of Florida).

These actions assert causes of action for, among others, fraud, intentional misrepresentation, federal and state securities violations, and violations of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq*. All of these causes of action are non-core proceedings as defined by 28 U.S.C. § 157. See also In re Arnold Print Works, Inc., 815 F.2d 165, 166-7 (1st Cir. 1987).

Pursuant to the statute, the Bankruptcy Court has jurisdiction to adjudicate all core proceedings, as defined, and "may enter appropriate orders and judgments," subject only to a deferential review. 28 U.S.C. §§ 157(b)(1), 158. However, with respect to non-core claims the Bankruptcy Court is empowered only to make recommended findings of fact and conclusions of law, which are subject to a *de novo* review in the District Court, which then exercises its final adjudicative power. 28 U.S.C. § 157(c)(1) and (2). Core proceedings are defined as those which are integral to the core bankruptcy function of restructuring debtor-creditor rights. In re Arnold Print Works, Inc., 815 F.2d at 166-7.

All, or substantially all, of the causes of actions asserted by the Plaintiffs in the instant action, and the substantively identical actions, are properly characterized as non-core

proceedings. These claims, all of which arise from the alleged fraud and Ponzi scheme, are not integral to the administration of the debtors estates. Rather, they raise complex issues of both state and Federal law. Plaintiffs in this action, and in Martin, have filed Motions to Withdraw the Reference, based largely on the characterization of these non-core claims. Regardless of the outcome of those motions however, four substantively identical actions are pending in the various district courts. It cannot be disputed that all six of these actions arise out of the same set of facts and the same occurrence. There is currently pending in this action a Motion to Transfer ("Transfer Motion") filed with the United States Judicial Panel on Multidistrict Litigation ("JPMDL"), docketed at MDL No. 2566, which seeks an order transferring this case and the five other similar class action cases to the JPMDL. Therefore, allowing the Trustee's Motion to Stay in this action creates the prospect that the Defendants in those actions, including Middlesex Savings, will be required to litigate common questions of fact and law at least twice.

Accordingly, Middlesex Savings opposes the stay to the extent it impedes the potential consolidation of the non-core claims with the other pending lawsuits and creates the prospect under which Middlesex Savings and other Defendants could be faced with litigation of non-core claims multiple times.

WHEREFORE, for the reasons set forth herein, Middlesex Savings Bank respectfully requests that this Court deny the Trustee's Motion to Stay the Action or, in the alternative, withhold ruling on said Motion until the Motion to Withdraw the Reference is ruled on by the District Court.

MIDDLESEX SAVINGS BANK
By its attorneys,

/s/ Kendra L. Berardi
Lawrence P. Heffernan (BBO #228660)
lheffernan@rc.com
Danielle Andrews Long (BBO # 646981)
dlong@rc.com
Kendra L. Berardi (BBO # 672626)
kberardi@rc.com
Robinson & Cole LLP
One Boston Place, 25th Floor
Boston, MA 02108
Tel: (617) 557-5900
Fax: (617) 557-5999

Dated: August 21, 2014

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CERTIFICATE OF SERVICE

I, Kendra L. Berardi, hereby certify that on August 21, 2014, I caused a copy of the foregoing *Limited Opposition to the Trustee's Motion to Stay the Action*, to be served by operation of the Court's CM/ECF system or first-class mail upon the following parties:

S. Elaine McChesney, Elaine.mcchesney@bingham.com

Carol E Head, carol.head@bingham.com

Kenneth I. Schacter, kenneth.schacter@bingham.com

Ari M. Selman, ari.selman@bingham.com

Monica Snyder, msnyder@murthalaw.com

Thomas S. Vangel
tvangel@murthalaw.com

Robert J. Bonsignore, rbonsignore@class-actions.us

Ronald A. Dardeno, rdardeno@dardeno.com

Martin B. Dropkin, nmatza@hotmail.com

Lee A Armstrong, laarmstrong@jonesday.com

Lee M. Pollack, lmpollack@jonesday.com

Jason C. Weida, jweida@jonesday.com

Charles R. Bennett, Jr., cbennett@murphyking.com

Michael K. O'Neil, moneil@murphyking.com

Stuart M. Glass, sglass@choate.com

Ian D. Roffman, iroffman@nutter.com

Joseph Toomey, jtoomey@nutter.com

Jordan L. Shapiro, JSLAWMA@aol.com

William J. Hanlon, whanlon@seyfarth.com

Mark C. Rossi, Esher.RossiECF@gmail.com

Roger Bertling rogerbertling@yahoo.com

Douglas Brooks, dbrooks@libbyhoopes.com

David E. Meadows, demeadows@kslaw.com

Phyllis B. Sumner, psumner@kslaw.com

Nellie E Hestin, nhestin@reedsmith.com

C. Elizabeth Brady Murillo, emurillo@burnslev.com

D. Scott Carlton, scottcarlton@paulhasstings.com

Jodi A. Kleinick, jodikleinick@paulhastings.com

Elizabeth C. Mueller, bethmueller@paulhastings.com.

Thomas A. Zaccaro, thomaszaccaro@paulhastings.com

John Commisso, john.commisso@jacksonlewis.com

Paul V. Kelly, paul.kelly@jacksonlewis.com

Sarah W. Walsh, sarah.walsh@jacksonlewis.com

Alan L. Braunstein, abraunstein@riemerlaw.com

Adam K. Doerr, adoerr@rbh.com

Robert W. Fuller, rfuller@rbh.com

Paul S. Samson, psamson@riemerlaw.com

Linda Hackett jslawma@aol.com

Andrea L. Marconi
Fennemore Craig, P.C.
2394 East Camelback Rd., Ste 600
Phoenix, AZ 85016

Joseph Craft
825 EAST MAIN STREET
BOONVILLE, IN 47601-1855

Craft Financial Solutions, LLC
C/O JOSEPH H. CRAFT aka JOE CRAFT, CPA
825 EAST MAIN STREET
BOONEVILLE, IN 47601-1855

Steven M. Labriola
21 KIWANIS BEACH ROAD
UPTON, MA 01568

Gerald Nehra
Attorney at Law PLLC
1710 Beach Street
Muskegon, MI 49441

Telex Mobile Holdings, Inc.
C/O BWFC PROCESSING CENTER, LLC
REGISTERED AGENTS
3960 HOWARD HUGHES PARKWAY, SUITE 500
LAS VEGAS, NV 89169

Telexelectric LLP
c/o BWFC Processing Center LLC
3960 Howard Hughes Parkway
Suite 500
Las Vegas, NV 89169

Telexfree Financial, Inc
2321 NW 37TH AVE.
COCONUT CREEK, FL 33063

Telexfree LLC
4705 S Durango Dr
#10-J51
Las Vegas, NV 89147

Telexfree, Inc.
225 CEDAR HILL STREET
SUITE 118
MARLBOROUGH, MA 01752

Richard W Waak
d/b/a Law Office of Nerha and Waak
11300 East Shore Drive
Delton, MI 49046

/s/ Kendra L. Berardi
Kendra L. Berardi