

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	Chapter 11
)	
CEP HOLDINGS, INC., <i>et al.</i> ,)	Case No. 07-71810
)	
Debtors.)	Jointly Administered
)	Judge Massey

**MOTION TO COMMENCE DISCOVERY PERIOD
AND FOR WAIVER OF REQUIREMENT FOR RULE 26 INITIAL
DISCLOSURES IN ADVERSARY PROCEEDINGS**

COMES NOW, Debtors CEP Holdings, Inc. and Colon End Parenthesis Trust, LLC (collectively, the “Debtors”) and respectfully request that this Court enter an order commencing the discovery period upon service of a complaint and summons and waiving Rule 26 initial disclosures in adversary proceedings filed in these cases. In support hereof, the Debtors respectfully show the Court as follows:

INTRODUCTION

1. In order to facilitate the discovery of information regarding numerous pre-petition transfers of the bulk of the Debtors’ assets, the Debtors request that the Court grant them relief from certain requirements of the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court.

JURISDICTION

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. § 1409.

BACKGROUND

3. On July 27, 2007, the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are managing their financial affairs as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. On August 3, 2007, the Court entered an order jointly administering these cases. No committee has been appointed in these cases.

4. On July 9, 2007, the Securities and Exchange Commission (the "SEC") filed its Complaint for Injunctive and Other Relief in the United States District Court for the Eastern District of North Carolina, Raleigh Division (the "District Court"), commencing the lawsuit styled Securities and Exchange Commission v. CEP Holdings, Inc., d/b/a colonendparenthesis.net, Trevor Reed, Clayton Kimbrell and Colon End Parenthesis Trust, LLC, Case No. 5:07-cv-00256-BO (the "SEC Action"). On July 10, 2007, the District Court entered the Order Granting Preliminary Injunction, Freezing Assets, Appointing a Receiver and Ordering Other Ancillary Relief (the "District Court Order"), to which Order the Defendants consented and the Debtors' businesses were shut down. William F. Perkins was appointed receiver for the Debtors pursuant to the District Court Order and has since managed the Debtors' assets and financial affairs.

5. The SEC has alleged that Trevor Reed ("Reed") and Clayton Kimbrell ("Kimbrell"), through Holdings, were involved in a fraudulent and unregistered offering of securities sold *via* the internet.

6. Upon information and belief, since May 2006, over \$16,000,000 has flowed into the bank accounts of Trust from more than 10,000 participants in one of the three "investment" programs operated by Holding's d/b/a websites. Trust served as an

internet payment processor through which Debtors' participants received and disbursed money.

7. Upon information and belief, Holding's "investment" programs included the following:

(a) a passive, interest-only investment format at colonendparenthesis.net. This program required a minimum initial investment of \$20 and promised a daily return of 2% (more than 700% per annum) that was payable every thirty(for consistency, use 30 instead of thirty?) days by credit to the participant's account at Trust. The participant committed to either a 180-day or 360-day option, but the original principal was not returned to the participant;

(b) the programs at CEPcoast.com and Coastin88.com were auto-surf sites whereby participants "purchased" advertising packages starting at \$5 each for a website that the participant wished to expose or advertise. The participant chose to recover up to 130% (CEPcoast) or 115% (Coastin88) of their advertising expense by participating in a program that sent 15 websites to them to view and rate. It appears to have taken less than a month for the participant to recover cost plus the profit if an advertising purchaser also viewed and rated all 15 websites every day. The caveats of these auto-surf programs were: (i) only advertising purchasers were eligible to view and rate websites that earned credits, (ii) to participate in a daily payout, the participant had to review all 15 websites sent to him or her that day, (iii) CEPcoast.com paid out 90% of daily ad purchases and Coastin88.com paid out 88%, and (iv) the payout to viewers each day was dependent on that day's advertising purchases (cash inflow), not the number of websites viewed and rated.

8. Upon information and belief, investors were led to believe that their funds were used to invest in safe “brick and mortar” type businesses that produced the promised yields, but there was, in fact, no significant investment of participant funds in any third-party business or investment other than a money market account yielding approximately 4%. Neither Reed nor Kimbrell invested personal funds in the programs described above.

9. Upon information and belief, (a) there was no review or audit of financial transactions of the Debtors and (b) their records consist almost entirely of databases created by website transactions.

10. Several millions of dollars were transferred out of the Debtors’ accounts to Reed, Kimbrell, their family, as well as to employees and sub-contractors, for which it is believed that the Debtors did not receive reasonably equivalent value.

11. Debtors had no source of funding for the profits paid to participants in these schemes other than the deposits of subsequent investors. It appears that more than 4,000 investors are still owed more than \$9,000,000 of the money they initially invested in Debtors.

12. On August 2, 2007, the Debtors filed adversary proceedings in each of the Debtors’ bankruptcy cases styled CEP Holdings, Inc. and Colon End Parenthesis Trust, LLC v. Clayton Kimbrell, Greg Kimbrell, Trevor Reed, Earl Reed, Ginger Phillips Reed, Russell Phillips, Jessica Phillips, Chris Barany and Clifford Barany, Adv. Proc.

Nos. 07-06382 & 07-06383, in which they are seeking a recovery of approximately \$1,473,665.08 (the “Insider Adversary”).¹

13. On August 7, 2007, the Debtors filed adversary proceeding styled CEP Holdings, Inc., et al v. SureInvest, LLC, Michael Donaker, Kyle Herron and Tammy Dowell, Adv. Proc. Nos. 07-06390, in which they are seeking a recovery of approximately \$1,671,000 (the “SureInvest Adversary”).

14. The Debtors anticipate that in the near future they will file numerous adversary proceedings (possibly dozens) seeking to avoid and recover certain transfers made by the Debtors to their “investors” prior to the Debtors’ bankruptcy filing (the “Avoidance Actions”). Similar relief to that being sought in this motion is being sought in the Insider Adversary and SureInvest Adversary, as well, by way of separate motions in those proceedings.

REQUESTED RELIEF

15. Absent the establishment of certain procedures to govern the Avoidance Actions, it will become more expensive and difficult for the Debtors to locate and collect its assets that were transferred prior to the bankruptcy filing.

16. The Debtors seek the entry of an order governing certain procedural aspects of discovery in the Avoidance Actions. The Order would provide for:

(a) commencement of discovery upon service of the complaint and summons in each adversary proceeding; and

(b) the waiver of the requirement for Rule 26 initial disclosures.

¹ Due to the Court’s entry of an order providing for the joint administration of the Debtors’ bankruptcy cases on August 3, 2007, the Debtors intend to request that the Insider Adversaries be consolidated into one adversary proceeding.

17. The Debtors shall serve a copy of the Order upon all defendants in the Avoidance Actions at the same time it serves the summons and complaint.

BASIS FOR RELIEF

18. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The purpose of § 105(a) is to “assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01 (15th ed. rev. 2005). Thus, § 105(a) of the Bankruptcy Code essentially codifies the bankruptcy court’s inherent equitable powers. *See Mgmt. Tech. Corp. v. Pardo*, 56 B.R. 337, 339 (Bankr. D.N.J. 1985) (court’s equitable power is derived from § 105).

19. The Court should exercise its equitable powers to alter the requirements of Fed. R. Civ. P. 26 as made applicable hereto by Fed. R. Bankr. P. 7026 and Local Rules 7016-1 and 7026-2 due to the circumstances that exist in these cases. Because of the potential for dissipation of these funds by those to whom they were transferred, the Debtors must act quickly to obtain discovery regarding the funds and the persons from whom they can be recovered, which persons may have to be added as parties to this case.

20. Accordingly, the Debtors respectfully request an order from this Court providing for the commencement of discovery from the service of the Avoidance Actions and waiving the requirement for Rule 26 initial disclosures.

NOTICE

21. Notice of this Motion has been provided to the (a) the United States Trustee; (b) the U.S. Securities and Exchange Commission and its counsel; (c) the

District Director of the Internal Revenue Service for this district; and (d) the persons listed on the Debtors' List of Claimants Holding 20 Largest Unsecured Claims. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary and that the relief can be granted without a hearing.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter an order:

- (a) providing for the commencement of discovery from the service of the complaint and summons in the Avoidance Actions;
- (b) providing for the waiver of the requirement in Rule 26 for initial disclosures in the Avoidance Actions; and
- (c) granting the Debtors such other and further relief as is just and proper.

Respectfully submitted, this 8th day of August, 2007.

GREENBERG TRAURIG, LLP

/s/ James R. Sacca

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