

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

SECURITIES AND EXCHANGE COMMISSION, )  
Plaintiff, )  
 )  
vs. )  
 ) 1:03-cv-1659-LJM-WTL  
PATRICK BALLINGER, *et al.*, )  
Defendants. )  
 )

**ORDER**

On July 17, 2006, Branson Tourism Center Marketing, LLC, and Branson Tourism Center Investment, LLC (“BTC” or the “Branson Plaintiffs”), brought a Declaratory Judgment action against several defendants including the Receiver in the instant case. The Branson Plaintiffs rightfully assert in the motion that the Receiver did at one time have control of the assets of defendants Larsheid, OTT, and LEL Enterprises, Inc. (“LEL”). In the Motion, the Branson Plaintiffs allege that the website, branson.com, was sold by Larsheid, OTT, and LEL to them and that payment of funds had been acknowledged by the Receiver. The Receiver does not dispute these allegations.

The Branson Plaintiffs then allege that before the sale of the website to them had closed in February of 2006, Larsheid, OTT, and LEL entered into an agreement with the other named defendants with regard to the website. On November 14, 2005, Larsheid, OTT, and LEL, entered into a Website Asset Purchase and Sale Agreement with BTC. On November 25, 2005, Defendant Branson Cabin Rentals, LLC (“Branson Cabins”), entered into a Website Utilization Agreement with Larsheid, OTT, and LEL. These parties then filed one or more UCC-1 Financing Statements with the office of the Missouri Secretary of State asserting rights and interests in the website. The Branson Plaintiffs assert that the Receiver did not authorize or approve this November 2005 arrangement. The Branson Plaintiffs report in the Motion that there now exists a controversy between them and the participants named as defendants in the November arrangement.

The Branson Plaintiffs ask this Court to enter a declaratory order settling title to the website in

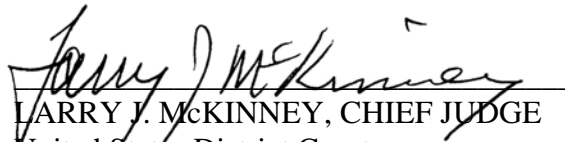
themselves and destroy any interest that might be claimed by the November buyers and declare the November arrangement null and void.

The Receiver asks this Court to dismiss the Motion as to the Receiver on the grounds that the Motion does not allege any harm to Plaintiffs by the Receiver, nor does it claim that the Receiver now asserts a claim to or interest in the website. The Receiver asserts that he is not a necessary party to the action and that the action should be dismissed and allowed to proceed against the appropriate parties in the state court.

This Court agrees with the Receiver. This application is now dismissed as to the Receiver because it appears beyond doubt that the applicants do not allege any facts in their application that would entitle them to relief against the Receiver. *See Perkins v. Silverstein*, 939 F.2d 463, 466-67 (7<sup>th</sup> Cir. 1991). The Receiver's Motion to Dismiss is **GRANTED**.

Because the basis for the Branson Plaintiffs' Motion for Declaratory Judgment in this Court is based on the Receiver's alleged interest in the property at issue, and the Court has decided that the Receiver is not a proper party in the suit, the Court is without jurisdiction to decide the matters raised by the declaratory motion, therefore, the Branson Plaintiffs' Motion for Declaratory Judgment is hereby **DISMISSED without prejudice**. This Order renders **MOOT** the Branson Defendants', Branson Cabin Rentals, LLC, Thousand Hills Management Company, Inc., Vacation World, Inc. and Thousand Hills Golf Partnership, LLP, Motion to Dismiss.

IT IS SO ORDERED this 18<sup>th</sup> day of October, 2006.

  
LARRY J. MCKINNEY, CHIEF JUDGE  
United States District Court  
Southern District of Indiana

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