

HOLLAND & HART LLP
Doyle S. Byers, #11440
Cory A. Talbot, #11477
Engels J. Tejada, #11427
Chelsea J. Davis, #16436
222 S. Main Street, Suite 2200
Salt Lake City, Utah 84101
Telephone: (801) 799-5800
Facsimile: (801) 799-5700

Attorneys for David K. Broadbent as Court-Appointed Receiver

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL TRADE COMMISSION; and
UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

vs.

ZURIXX, LLC, a Utah limited liability
company; *et al.*,

Defendants.

**RESPONSE TO URGENT MOTION TO
STAY**

Case No. 2:19-cv-00713-DAK-DAO

Judge Dale A. Kimball

Magistrate Judge Daphne A. Oberg

David K. Broadbent, the Court-appointed receiver (the “Receiver”), opposes the Urgent Motion to Stay [ECF 185] (the “Motion”) submitted by David Efrón and Efron Dorado, S.E. (“Efron Dorado”) as follows:

MEMORANDUM

Mr. Efrón and Efron Dorado seek contradictory relief. On the one hand, they ask the Court to stay enforcement of its Memorandum Decision and Order [ECF 166] (the “Order”), while on the other hand, they ask the Court to expedite the Receiver’s efforts to recover and

remove receivership assets from the former office of Zurixx, LLC (“Zurixx”) in Puerto Rico, the very relief authorized by the Order. Whatever they want to accomplish, Mr. Efrón and Efron Dorado fail to articulate a factual or legal basis for the Court to grant any relief. There are no grounds for a stay, and the Receiver is moving expeditiously to recover and remove receivership assets from the office. The Court should deny the Motion.

I. Background.

Zurixx leased office space in Puerto Rico from Efron Dorado. At the time of the Receiver’s appointment, the office contained various receivership assets, such as computer servers, documents, and furniture. The Receiver removed some of the receivership property, but discussions with Mr. Efrón regarding these matters broke down, leading the Receiver to move the Court to hold Mr. Efrón and Efron Dorado in contempt. (*See* Receiver’s Mot. for Order Holding Efron Dorado, S.E. & David Efrón in Contempt of Court [ECF 115].)

The Court granted the Receiver’s motion. Under the Court’s Order, Mr. Efrón and Efron Dorado must either “allow the Receiver and his representatives access to the office to recover and remove Zurixx’s assets or . . . compensate the Receiver for the value of those assets that Efron Dorado and/or Efron took or otherwise disposed of in violation of the Injunction.” (Order at 4-5.) In response, Mr. Efrón and Efron Dorado asked the Court to reconsider the Order and then attempted to appeal the Order, as well. (*See* Mot. for Recons. & in Compliance with the Court’s Order [ECF 173]; Notice of Appeal [ECF 177].) Trying to short-circuit the ongoing dispute, the Receiver wrote to Mr. Efrón and Efron Dorado to open settlement discussions. (*See* Mot. Ex. 1.) Mr. Efrón and Efron Dorado interpreted that letter as an effort “to try to extort money from” them and filed their Motion. (*Id.* at 2.)

II. The Court should not stay enforcement of the Order pending Mr. Efrón and Efron Dorado’s appeal.

Mr. Efrón and Efron Dorado do not clearly articulate why a stay is appropriate. They first mention the stay requested by some defendants in light of “two leading cases pending in the U.S. Supreme Court” regarding the scope of remedies available under the FTC Act. (Mot. at 2 ¶ 4.) But to the extent they seek a stay on those grounds, Mr. Efrón and Efron Dorado have already conceded that the FTC Act “authorizes . . . injunctions.” (Mot. for Recons. & in Compliance with the Court’s Order [ECF 173] at 3 ¶ 14.) Since the Order enforces the terms of the Stipulated Preliminary Injunction [ECF 54], the referenced Supreme Court litigation provides no basis for a stay of the Order.

Mr. Efrón and Efron Dorado next request a stay “throughout the appellate process,” (Mot. at 2), a reference to their prematurely filed Notice of Appeal. (*See* Order [ECF 180] at 1-2.) To obtain such a stay, Mr. Efrón and Efron Dorado must demonstrate that the following factors weigh in their favor: “(1) the basis for jurisdiction in this Court and the Court of Appeals; (2) the likelihood of success on appeal; (3) the threat of irreparable harm if the stay is not granted; (4) the absence of harm to opposing parties if the stay is granted; and (5) any risk of harm to the public interest.” *United States v. Engstrum*, 2009 WL 2338350, at *1 (D. Utah July 29, 2009) (citing 10th Cir. R. 8.1). Mr. Efrón and Efron Dorado do not even mention, much less address, these factors. Absent such an effort, their Motion fails. *See* Fed. R. Civ. Pro. 7(b)(B) (requiring movants to “state with particularity the grounds for seeking the order”); *see also, e.g., Amann v. Reyes*, 2019 WL 977920, at *9 n.13 (D. Utah Feb. 28, 2019) (refusing to consider a “one-sentence argument” in a motion to dismiss because it failed to comply with Rule 7(b)(B)).

III. The Receiver is recovering and removing assets from the Puerto Rico office.

The Receiver is working with personnel in Puerto Rico to auction off receivership assets from Zurixx's office. As Mr. Efrón and Efron Dorado have alluded, the personal property likely has the most value if used for the same purpose as it has been used, *i.e.*, as office equipment at the leased premises. To that end, the Receiver remains hopeful that a resolution between the parties can be reached. However, in the event no resolution is reached, the Receiver has retained counsel in Puerto Rico and is diligently seeking to retain an auctioneer to dispose of the property. The timing of the auction is not yet known because of logistical hurdles, but the Receiver hopes to remove the property from the premises within the month of October and to promptly dispose of it thereafter.

CONCLUSION

For these reasons, the Receiver requests that the Court deny the Motion.

RESPECTFULLY SUBMITTED this 2nd day of October, 2020.

HOLLAND & HART LLP

/s/ Cory A. Talbot _____

Doyle S. Byers

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