

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 21-61644-CIV-SINGHAL

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MJ CAPITAL FUNDING, LLC,
MJ TAXES AND MORE, INC., and
JOHANNA M. GARCIA,

Defendants.

ORDER DENYING RECONSIDERATION

THIS CAUSE is before the Court on the Non-Parties Pavel Ruiz MJCF, LLC and UDM Remodeling, LLC (“Pavel Companies”) Motion to Vacate and Reconsider the Entry of Judgment/Order [ECF #79] Granting the Receiver’s Ex Parte Motion to Expand Receivership Estate to include the “Pavel Companies” [ECF #67] and Memorandum of Law (DE [83]). The Receiver filed a response in opposition (DE [95]) and the Pavel Companies filed a reply (DE [98]). Accordingly, the matter is ripe for review.

I. LEGAL STANDARD

“Courts have distilled three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice.” *Instituto de Prevision Militar v. Lehman Bros., Inc.*, 485 F. Supp. 2d 1340, 1342 (S.D. Fla. 2007) (quoting *Cover v. Wal-Mart Stores, Inc.*, 148 F.R.D. 294, 295 (M.D. Fla. 1993)). A motion for reconsideration cannot be used “to relitigate old matters, raise argument or present evidence that could have been raised

prior to the entry of judgment.” *Michael Linet, Inc. v. Village of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005). Furthermore, “[i]t is an improper use of the motion to reconsider to ask the Court to rethink what the Court already thought through – rightly or wrongly.” *Z.K. Marine, Inc. v. M/V Archigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992) (quoting *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)). “A motion for reconsideration is ‘committed to the sound discretion of the district judge.’” *Garcon v. United Mut. of Omaha Ins. Co.*, 779 Fed. Appx. 595, 600 (11th Cir. 2019) (citations omitted).

II. DISCUSSION

On August 9, 2021, the Securities and Exchange Commission (“SEC”) filed a Complaint for Injunctive and Other Relief (DE [1]) commencing this proceeding against the Original Receivership Defendants and Johanna M. Garcia. The Complaint alleges, *inter alia*, that Defendant Johanna M. Garcia used the Original Receivership Defendants to run a Ponzi scheme, and tricked investors into thinking the money they invested would be used to fund small business MCA loans. The victim investors were promised annual returns on their investments between 120% - 180%. See (Compl. (DE [1]) at ¶¶ 1–3). These representations were lies; the investor “returns” actually were funded with money obtained from new investors. See *id.* at ¶ 5, 33.

On August 12, 2021, the Court entered an Order (the “Receivership Order”) (DE [17]) appointing Corali Lopez-Castro as Receiver over the Original Receivership Defendants in order to preserve their property and other assets attributable to funds derived from investors, and prevent dissipation or concealment of that property for the benefit of investors. On October 5, 2021, the Receiver filed Receiver’s Motion and

Memorandum of Law to Expand Receivership Estate (“Motion to Expand”) (DE [67]) and the Receiver’s Motion and Memorandum of Law to Expand Receivership Estate [Unredacted] (DE [75]), which sought to expand and modify the Receivership Order (DE [17]). Counsel for the Defendant Johanna M. Garcia and Plaintiff Securities and Exchange Commission had no objection to the relief sought by the Receiver. In the Motion to Expand (DE [67]), the Receiver alleged in a classic Pyramid-like structure, the MJ Capital scheme relied upon “Board Members” to identify and recruit new investors. Mr. Ruiz was one of these “Board Members,” and was directly responsible for hundreds, if not thousands, of new victim investors depositing money into vehicles for the Ponzi fraud. Pursuant to her duties to marshal and preserve all Receivership Assets, the Receiver sought to include the Pavel Companies, which held and looted substantial Receivership Assets.

On reconsideration (DE [83]), the Pavel Companies claim the Receiver did not serve the Motion to Expand (DE [67]) on the Pavel Companies, as a result, Mr. Ruiz did not have notice of the Motion to Expand and the Pavel Companies were deprived of due process. And, if reconsideration were granted, the Pavel Companies argue there is a substantial likelihood they would prevail on the merits. In opposition, the Receiver argues the Pavel Companies have set forth no valid basis for reconsideration of the Expansion Order (DE [79]). This Court agrees.

“Due process requires notice and an opportunity to be heard.” *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (citations omitted). “The process that is due varies according to the nature of the right and to the type of proceedings.” *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)). “However, a hearing is not required if there is no

factual dispute.” *Id.* (citation omitted). Furthermore, Local Rule 7.1(b)(1)-(2) provides that no hearing will be held on motions unless set by the Court, a party seeking a hearing will request it within the motion or opposing memorandum in a separate section titled “request for hearing” and the Court has the discretion to grant or deny a request for hearing.

A request to include a non-party in a receivership is properly brought through a motion. *See, e.g., CCUR Aviation Fin., LLC v. S. Aviation, Inc.*, 2021 WL 1738764, at *3 (S.D. Fla. May 3, 2021) (granting receiver’s motion to expand receivership to include an aircraft); *SEC v. Creative Capital Consortium, LLC*, 2009 WL 10664430, at *1 (S.D. Fla. Sept. 21, 2009) (granting receiver’s motion to expand receivership over non-parties). Proper notice is provided where the motion is mailed to the non-party entities or the principal who exercises substantial control over the entities. *See, e.g., Creative Capital*, 2009 WL 10664430, at *1 (granting motion to expand receivership over non-parties who were served via mail).

Here, the Receiver served the Motion to Expand (DE [67]), via prepaid first-class U.S. mail, on the Pavel Companies and Mr. Ruiz at their primary business and mailing addresses as listed in the Florida Department of State, Division of Corporations’ electronic online records: (a) 1700 SW 78th Ave. Unit 610, Plantation, Florida 33324 (for Pavel LLC’s principal address and for Mr. Ruiz as the authorized member), and (b) 2439 SW 42nd Ave Apt. B, Fort Lauderdale, FL 33317 (for UDM Remodeling’s principal address and for Mr. Ruiz as the authorized member). *See* (Mot. to Expand (DE [67]) at 13–14); *see also* S.D. Fla. L.R. 5.2(a) (“Signature by the party or its attorney on the certificate of service constitutes a representation that service has been made.”).

Here, the Motion to Expand (DE [67]) is supported by clear and unrefuted evidence

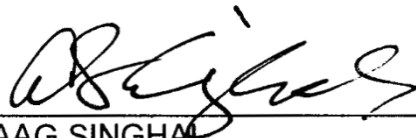
that the Pavel Companies were used as an instrumentality of a Ponzi scheme and received substantial investor funds. In the instant Motion for Reconsideration (DE [83]), the Pavel Companies do not dispute the Receiver's arguments and factual presentation, nor do they present any additional facts which would compel the Court to reconsider the Expansion Order (DE [79]) and deny the Motion to Expand (DE [67]). The Pavel Companies do not even suggest that they have ever engaged in any legitimate business or describe their operations. Instead, the Pavel Companies misstate, misconstrue, and misapply law without articulating a valid basis for the relief requested. The Pavel Companies have not demonstrated this Court made a clear error or that the Pavel Companies have a substantial likelihood they would prevail on the merits. In reviewing the Motion to Expand (DE [67]), this Court found that the Receiver made a sufficient and proper showing in support of the relief requested. See *SEC v. Quiros*, 966 F.3d 1195, 1199 (11th Cir. 2020) ("A district court has 'broad powers and wide discretion to determine relief in an equity receivership.'") (quoting *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992)). The Court determined that expansion of the Receivership is necessary to effectively safeguard assets for the benefit of investors in this matter and to guard against potential dissipation, in accordance with the considerations set forth in *CCUR Aviation Fin., LLC v. S. Aviation, Inc.*, 2021 WL 1738764, at *2 (S.D. Fla. May 3, 2021). Accordingly, the Motion to Expand (DE [67]) was granted on October 14, 2021, in this Court's Order Granting Receiver's Motion to Expand Receivership Estate ("Expansion Order") (DE [79]).

Accordingly, it is hereby

ORDERED and ADJUDGED that the Non-Parties' Pavel Ruiz MJCF, LLC and

UDM Remodeling, LLC (“Pavel Companies”) Motion to Vacate and Reconsider the Entry of Judgment/Order [ECF #79] Granting the Receiver’s Ex Parte Motion to Expand Receivership Estate to include the “Pavel Companies” [ECF #67] and Memorandum of Law (DE [83]) is **DENIED**.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 18th day of March 2022.



RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished to counsel of record