

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

X

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**- against -**

**SAMUEL WYLY, and DONALD R.  
MILLER, JR., in his Capacity as the  
Independent Executor of the Will and Estate  
of Charles J. Wyly, Jr.,**

**Defendants,**

**and**

**CHERYL WYLY, EVAN ACTON WYLY,  
LAURIE WYLY MATTHEWS, DAVID  
MATTHEWS, LISA WYLY, JOHN  
GRAHAM, KELLY WYLY O'DONOVAN,  
ANDREW WYLY, CHRISTIANA WYLY,  
CAROLINE D. WYLY, MARTHA WYLY  
MILLER, DONALD R. MILLER, JR., in his  
individual capacity, CHARLES J. WYLY  
III, EMILY WYLY LINDSEY, JENNIFER  
WYLY LINCOLN, JAMES W. LINCOLN,  
and PERSONS, TRUSTS, LIMITED  
PARTNERSHIPS, AND OTHER ENTITIES  
KNOWN AND UNKNOWN,**

**Relief Defendants.**

X

**SHIRA A. SCHEINDLIN, U.S.D.J.:**

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>12/2/14</u>
---

**ORDER**

**10-cv-5760 (SAS)**

On November 3, 2014 I ordered a temporary asset freeze of the Wyllys' property and the property of the relief defendants that could be traced to property of the Isle of Man Trusts and Companies. The asset freeze did not apply to any assets of Samuel Wyly or Caroline Wyly that were listed on schedules filed in the United States Bankruptcy Court for the Northern District of Texas ("Bankruptcy Court") and thus under the Bankruptcy Court's supervision. Prior to this Order, the SEC named, *inter alia*, Mrs. Wyly as a relief defendant in this action.

Mrs. Wyly contends that the SEC violated the automatic stay set out in 11 U.S.C. § 362(a) by naming her as a relief defendant, and seeks relief in the Bankruptcy Court. The SEC argues that naming Mrs. Wyly as a relief defendant falls within an exception to the automatic stay for proceeding by a governmental unit to enforce its police or regulatory power, as set out in 11 U.S.C. § 362(b)(4). The SEC requests the Court to order Mrs. Wyly to seek relief in this Court, and not the Bankruptcy Court.

Mrs. Wyly notes that the applicability of the automatic stay is currently pending before the Bankruptcy Court and is set for an evidentiary hearing on December 17, 2014. She further argues that this is the appropriate venue for the relief sought, as she has filed her schedules of assets in the Bankruptcy Court, and

thus the asset freeze no longer applies to the property of her bankruptcy estate.

The Bankruptcy Court is the appropriate venue to adjudicate this question. The SEC relies on *In re D'Angelo*, in which a bankruptcy court held that a disgorgement action against a relief defendant debtor, brought prior to her bankruptcy filing, fell within the police power exception to the automatic stay.<sup>1</sup> There, the New Jersey Bureau of Securities (the "Bureau") named the debtor as a relief defendant and brought an action seeking disgorgement of the proceeds of her husband's securities violations. The debtor argued that the disgorgement action violated the automatic stay of Section 362(a), because she was not accused of violating the securities laws herself.<sup>2</sup> The bankruptcy judge disagreed, stating, "[t]he fact that this debtor is not a wrongdoer, but allegedly the recipient of financial benefit from the fraud, does not alter the analysis that a disgorgement remedy fosters the public purpose behind the state's securities law."<sup>3</sup> Therefore, the disgorgement action was excepted from the automatic stay.<sup>4</sup>

---

<sup>1</sup> See 409 B.R. 296 (Bankr. D. N.J. 2009).

<sup>2</sup> See *id.* at 297.

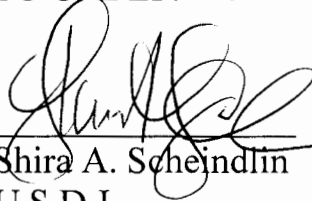
<sup>3</sup> *Id.* at 298.

<sup>4</sup> *Id.* Interestingly, the District Court for the District of New Jersey had initially determined that the action *did* violate the automatic stay, but allowed the Bureau to reinstate the action after obtaining permission from the Bankruptcy Court. See *id.* at 297.

While this may be the result here, as in *D'Angelo*, it should be the Bankruptcy Court that makes this determination. *First*, the asset freeze most likely no longer applies to any of Mrs. Wyly's property, as her schedules of assets have been filed in Bankruptcy Court. Thus, all her property is now under the Bankruptcy Court's supervision. *Second*, in contrast to *D'Angelo*, Mrs. Wyly had already filed for bankruptcy *before* the SEC named her as a relief defendant. This argues strongly in favor of allowing the Bankruptcy Court to proceed with its scheduled hearing to determine whether naming Mrs. Wyly as a relief defendant violated the automatic stay.

For the above reasons, the SEC's request is denied.

SO ORDERED:

  
Shira A. Scheindlin  
U.S.D.J.

Dated: New York, New York  
December 2, 2014

**- Appearances -**

**For the SEC:**

Bridget Fitzpatrick, Esq.  
Hope Augustini, Esq.  
Gregory Nelson Miller, Esq.  
John David Worland, Jr., Esq.  
Martin Louis Zerwitz, Esq.  
Daniel Staroselsky, Esq.  
Angela D. Dodd, Esq.  
Marsha C. Massey, Esq.  
United States Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549  
(202) 551-4474

**For Defendants:**

Stephen D. Susman, Esq.  
Harry P. Susman, Esq.  
Susman Godfrey LLP  
1000 Louisiana Street, Ste. 5100  
Houston, TX 77002  
(713) 653-7801

David D. Shank, Esq.  
Terrell Wallace Oxford, Esq.  
Susman Godfrey LLP  
901 Main Street, Ste. 5100  
Dallas, TX 75202  
(214) 754-1935

Steven M. Shepard, Esq.  
Mark Howard Hatch-Miller, Esq.  
Susman Godfrey LLP  
560 Lexington Avenue  
New York, NY 10022

(212) 336-8332

**For Samuel Wyly:**

Josiah M. Daniel III, Esq.  
Vinson & Elkins LLP  
2001 Ross Avenue, Ste. 3700  
Dallas, TX 75201  
(214) 220-7718

**For Caroline D. Wyly:**

Judith W. Ross, Esq.  
Law Offices of Judith W. Ross  
700 N. Pearl Street, Ste. 1610  
Dallas, TX 75201  
(214) 377-7879

**For Cheryl Wyly, Evan Wyly, and Martha Miller:**

David L. Kornblau, Esq.  
Covington & Burling LLP  
620 Eighth Avenue  
New York, NY 10018  
(212) 841-1084

**For Laurie Matthews, Lisa Wyly, Kelly O'Donovan, Andrew Wyly,  
Christiana Wyly, Emily Wyly, Charles J. Wyly, III, and Jennifer Lincoln:**

Stewart H. Thomas, Esq.  
Hallet & Perrin, P.C.  
1445 Ross Avenue, Ste. 2400  
Dallas, TX 75202  
(214) 953-0053

**For Jennifer Lincoln:**

Kostas D. Katsiris, Esq.  
Venable LLP  
1270 Avenue of the Americas, 25th Floor  
New York, NY 10020  
(212) 307-5500