

IN THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

THE LAW OFFICES OF
JONATHAN B. HARRIS, P.A., et. al.,

Appellants,

vs.

3rd DCA Case No.: 2024-0334

VIRAGE CAPITAL
MANAGEMENT, L.P., et al.

Appellees.

_____ /

**APPELLANTS SECOND NOTICE OF FILING
SUPPLEMENTAL AUTHORITY**

COME NOW Appellants by and through undersigned counsel and pursuant to the Florida Rules of Appellate Procedure hereby files, as supplemental authority, the attached Assignee's Notice of Appeal of Non-Final Order Granting Expedited Relief to Disburse Settlement Funds to Innocent Third-Party Clients (Exhibit "A"), thus maintaining the status quo of the issues on appeal in the above matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served on all counsel of record this Notice of Filing through the court's E-portal system to those

counsel of record on the Service List below, this **May 30, 2024**.

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

LARRY S. HYMAN, as Assignee,

Plaintiff,

v.

Case No. 2021-CA-9064

VIRAGE CAPITAL MANAGEMENT LP,
VIRAGE, LLC, VIRAGE SPV 1 LLC,
JONATHAN BERYL HARRIS,
LAW OFFICES OF J.B. HARRIS, P.A.,
J.B. HARRIS, P.A., and ELIAS, LLC,

Defendants.

NOTICE OF APPEAL OF A NON-FINAL ORDER

NOTICE IS GIVEN that the plaintiff, Larry S. Hyman, as Assignee of Howard & Associates, Attorneys at Law, P.A., appeals to the Second District Court of Appeal for the State of Florida, the order of this Court rendered on May 10, 2024. A conformed copy of the Order Granting Motion for Expedited Relief to Disburse Settlement Proceeds is attached. The nature of the order is a non-final order determining the right to immediate possession of property.

JOHNSON, POPE, BOKOR,
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Exhibit "A"

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed on the May 30, 2024, using the Florida Court's e-filing Portal which will send a notice of electronic filing to all counsel.

/s/ Robert V. Potter
Robert V. Potter

9695731

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

LARRY S. HYMAN, Assignee,

Plaintiff,

CASE NO. 21-CA-9064 (DIVISION L)

v.

VIRAGE CAPITAL MANAGEMENT, LP,
et al.

Defendants.

_____ /

**ORDER GRANTING MOTION FOR EXPEDITED
RELIEF TO DISBURSE SETTLEMENT PROCEEDS**

THIS MATTER came before the Court for hearing via Zoom on April 29, 2024 (the “Hearing”) on a Motion for Expedited Relief to Disburse Settlement Proceeds Due to Non-Party Engle Tobacco Plaintiffs and Directing Assignee to Release Interest in Clients’ Settlement Recovery (Dkt. 83) (the “Motion”). The Court reviewed the Motion, the supporting Affidavit of Richard M. Elias, the Response to Motion for Expedited Relief to Disperse Settlement Proceeds Assignee Larry Hyman’s (“Assignee”) filed (Dkt. 95) (“Assignee’s Response”), Intervenor Creditor Titan Asset Purchaser, LLC’s (“Titan”) Notice of Joinder in Motion to Disburse Settlement to Tobacco Plaintiffs (Dkt. 98) (“Joinder”), Virage Capital Management LP’s (“Virage”) Response to Titan’s Joinder (Dkt. 99) (“Virage’s Response”), and the Non-Party Philip Morris USA, Inc. and RJ Reynolds Tobacco Company’s (together, “Non-Party Tobacco Companies”) Notice of No Opposition (“Notice”) (Dkt. 96) and considered argument from counsel at the Hearing and provides as follows.

1. The Motion¹ seeks authorization to disburse settlement proceeds generated by a settlement of fifty-four (54) Engle progeny cases, whereby sixty (60) percent of the settlement proceeds, representing the Non-Party Engle Plaintiffs' share of the recovery will be promptly disbursed to the Non-Party Engle Plaintiffs ("Client Recovery"), and forty (40) percent of the settlement proceeds, representing the attorneys' fees generated by the settlement ("Attorneys Fees") will be deposited into a Qualified Settlement Fund and restrained from further disbursement until a further Court order authorizing disbursement.

2. In opposition to the Motion, Assignee argues that this Court lacks authority to issue an order on the Motion at this juncture, the Court does not have the ability to determine the rights and liabilities of non-parties, and that the relief requested in the Motion is vague and would not protect the Assignee's interests.

3. It is undisputed that the Non-Party Engle Plaintiffs and Non-Party Tobacco Companies consummated a settlement agreement and executed releases. *See* ¶13 of the Affidavit of Richard M. Elias, dated February 21, 2024; *see also* Non-Party Tobacco Companies Notice at ¶2. Those non-parties are entitled to voluntarily enter into settlement agreement without interference from the Assignee or any other creditor of the Estate. Assignee has not presented any authority or convincing argument that it has the right to unwind the settlement. Elias and the Tobacco Defendants have demonstrated, and the Assignee has not disputed, that the settlement is final.

4. The Non-Party Tobacco Companies represented that the Non-Party Engle Plaintiffs and Non-Party Tobacco Companies engaged in a good-faith settlement, obtained

¹ Section 727.110, Florida Statutes, authorizes any interested party to bring "[a]ll matters requiring court authorization under this chapter . . . by motion.

executed releases, and the Non-Party Tobacco Companies seek to fulfill their payment obligations under the settlement agreement.

5. The Court is vested with broad authority to enforce the provisions within chapter 727, Florida Statutes, which is designed with the express legislative intent to provide for the “orderly liquidation of insolvent estates,² and to ensure full reporting to creditors and equal distribution of assets according to priorities as established under this chapter.” *See Fla. Stat. §727.101. Section 727.104, Florida Statutes, provides, the Assignee “shall liquidate the assets of the estate with reasonable dispatch and convert the estate into money, collect all claims and demands hereby assigned as may be collectible, and pay and discharge all reasonable expenses, costs, and disbursements in connection with the execution and administration of this assignment from the proceeds of such liquidations and collections.” The Court has the express authority to “[e]nforce all provisions” of chapter 727, Florida Statutes, which expressly includes “the power” to “[e]xercise any other powers that are necessary to enforce or carry out the provisions of this chapter.” See Fla. Stat. §727.109(1) & 727.109(15).*

6. Here, the Client Recovery is not an Asset of the Estate. The Assignor has no interest in the Client Recovery and since the “assignee stands in the shoes of the assignor . . . with minor exceptions prescribed by the statute, the assignee cannot stand in any better position than his assignor.” *Akin Bay Co., LLC v. Von Kahle*, 180 So. 3d 1180, 1182–83 (Fla. 3d DCA 2015). Virage’s June 15, 2023 Notice of Security Interest expressly states that Assignee claims a lien in “40% of gross fees” generated by such settlements, and Attorneys Fees are not included in the Client Recovery. While the Estate may (or may not) have an interest in the Attorney Fees,

² “Estate” is defined as “all of the assets of the assignor.” And “asset” is defined as “legal or equitable interest of the assignor in property.” see Fla. Stat. §727.103(1) & (9).

the Estate does not and cannot have an interest in the Client Recovery because that is not property of the Estate subject to orderly liquidation and should not be the subject of the exercise of control by the Assignee.

7. Virage has refused to narrow the scope of its claim of lien without approval from Assignee, and Assignee has refused to agree to such an arrangement. As a result, the Non-Party Tobacco Companies have not disbursed any the proceeds of the Group Settlement, and the Non-Party Engle Plaintiffs are left without the recovery they bargained for and were promised. Movant argues that the Non-Party Engle Plaintiffs are suffering from delay of receipt of their settlement funds.

8. The Estate is adequately protected because this order requires that all Attorney Fees be deposited in the QSF, whereas Assignee and Virage only claim a 40-percent interest in the Attorney Fees. Therefore, disbursement of the Client Recovery has no impact on potential Estate Assets. Titan represented that it does not claim any interest in the Client Recovery and further suggested quickly making arrangements to disburse the Client Recovery to the Non-Party Engle Plaintiffs in order to protect the settlement and secure its resulting fee payment to the interested parties.

Accordingly, it is ORDERED that

- a) The Motion is GRANTED;
- b) Upon Non-Party Tobacco Companies' payments of settlement proceeds pursuant to settlement agreements, Assignee, Virage, Titan, and Elias, the parties are ordered to facilitate the disbursement of settlement proceeds as follows:
 - a. Defendant Elias shall disclose to Assignee, Virage, and Titan:
 - i. the name and contact information of the third-party administering the QSF;
 - ii. The financial institution and bank account information for the QSF;

- iii. The subject services contract of the third-party administering the QSF; and
 - iv. The case styles of the Non-Party Engle Plaintiffs comprising the 54 Engle progeny actions raised in the Motion and subject to the group settlement.
- b. Elias, Assignee, Virage, and Titan shall prepare a jointly-drafted letter of instruction to be served on the third-party administrator of the QSF providing that:
- i. The Client Recovery portion of the settlement funds generated from the Group Settlement, representing 60 percent of the recovery, shall be promptly distributed to the Non-Party Engle Plaintiffs (as otherwise required under the Settlement, which may include payment of healthcare liens, costs and expenses); and
 - ii. The Attorney Fee portion of the settlement funds generated from the Group Settlement, representing 40 percent of the recovery, shall not be disbursed unless and until the third-party administrator receives a Court order authorizing the disbursement of the Attorney Fees, or another joint instruction including each of Elias, Assignee, Virage and Titan.
- c. The Non-Party Tobacco Companies may disburse the settlement proceeds contemplated by this order.

DONE and ORDERED in Chambers in Tampa, Hillsborough County, Florida, this _____ day of _____, 2024.

Electronically Conformed 5/10/2024
Darren D. Farfante

Honorable Darren Farfante
Circuit Judge

Copies furnished to:
All parties of record