Before the
Federal Communications Commission
Washington, DC 20554

In re Application of	)	
	)	
W. Lawrence Patrick, Receiver, Assignor	)	
	)	
VCY America, Inc., Assignee	)	LMS Application File No.
	)	0000130216
	)	
Application for Consent to Assignment of	)	
Radio Stations	)	
KFRH(FM), North Las Vegas, NV (FIN: 19062)	)	
KREV(FM), Alameda, CA (FIN: 36029)	)	
KRCK-FM, Mecca, CA (FIN: 52908)	)	

To: Chief, Audio Division, Media Bureau

SUPPLEMENTAL PLEADING IN SUPPORT OF PROMPT DISPOSITION OF ASSIGNMENT APPLICATION

Applicants W. Lawrence Patrick, Receiver ("Mr. Patrick" or "Receiver") and VCY America, Inc. ("VCY") submit this supplemental pleading as authorized by the staff of the Audio Division on a conference call among the parties on July 1, 2021.

I. INTRODUCTION

The FCC's failure to act upon the application ("Application") filed by Mr. Patrick and VCY for consent to assign radio stations KFRH(FM), KREV(FM), and KRCK(FM) (the "Stations") is contrary to law and established Commission precedent and is unintentionally, but substantially, interfering with the receivership process. The questions now before the Commission are simple: is the Receiver the proper licensee of the Stations and is VCY qualified to purchase the Stations. The answer to both questions is, unequivocally, yes: the United States District Court for the Central District of California (the "District Court") has unambiguously authorized and directed the Receiver to sell the Stations, and VCY is an existing licensee whose

credentials are irreproachable.[1] Yet, more than six months since the Receiver and VCY filed the Application and more than four months since the pleading cycle closed, the FCC continues to allow the Application to languish.

If the FCC grants the Application, the Receiver will be able to satisfy its court-ordered duty to sell the Stations to VCY and use the proceeds to satisfy the remaining debts of the receivership (which are many) and revert any remaining amounts to Mr. Stolz and his affiliated entities. Conversely, by declining to act on a meritorious application the Commission is interfering with the District Court's order and contravening the FCC's long-established policy recognizing the public interest benefit of protecting innocent creditors. There is simply no justification for further delay. The Commission should grant the Application and allow the receivership process to proceed unimpeded by a regulatory review that should have concluded long ago.

I. BACKGROUND

On July 6, 2020, Judge Jesus G. Bernal of the United States District Court for the Central District of California appointed Mr. Patrick as the Receiver over certain assets related to the Stations (the "Receivership Order"). The impetus for the appointment of a receiver was the failure of Royce International Broadcasting Corporation, Playa Del Sol Broadcasters, Silver State Broadcasting, LLC, Golden State Broadcasting, LLC, and Edward R. Stolz, II (the "Defendants") to satisfy a judgment against them after almost two years. The Receivership Order authorized the Receiver to "take charge of and manage Defendants' Radio Stations' assets, business, and affairs" and "to take all steps necessary to operate and manage Defendants' Radio

[1] The FCC's approval of the Receiver as Licensee became final orders of the Commission nearly a year ago. *See* BALH-20200716AAB, BALH-20200716AAC and File No. BALH-20200716AAD each granted July 24, 2020.

Stations." In addition, the Receivership Order, among other things, authorized the Receiver to "solicit offers for sale of Defendants' Ratio Stations' assets, including but not limited to the broadcast licenses issued by the Federal Communications Commission for Defendants' Radio Stations."

After the Receiver, an established and respected radio station broker, negotiated the sale of the Stations to VCY, Judge Bernal, on September 10, 2020, issued an order as follows:

> The Receiver is hereby authorized to ACCEPT the pending offer to purchase the radio stations, and is hereby DIRECTED to do so expeditiously and with an aim to close the transaction before the close of the calendar year.

Shortly thereafter, the Defendants filed the first of many motions to discharge the Receiver and terminate the receivership.[2] While that motion was pending, the Receiver and VCY negotiated a definitive agreement, which they filed with the Commission on December 30, 2020 as part of the Application.

On February 3, 2021, Royce International Broadcasting Corporation and Silver State Broadcasting, Inc. ("Petitioners") filed a Petition to Deny the Application.[3] Petitioners' primary argument was that the receivership was "in the process of being terminated" and that a motion was "pending to end this matter and to render moot any FCC consideration of the underlying APA and transaction." Since that time, Defendants have filed multiple requests with the District Court to terminate the receivership, all of which were denied.[4] Most recently, the Defendants filed a Petition for Writ of Mandamus with the United States Court of Appeals for the Ninth

[2] Long before the Defendants sought to dissolve the receivership they opposed and delayed its formation.

[3] Defendant Playa Del Sol Broadcasters did not join in the Petition to Deny the Application.

[4] *See* Orders from March 18, 2021 and June 2, 2021, attached hereto as Exhibit A. The District Court previously denied a similar request by the Defendants. *See* Order from October 9, 2020, attached hereto as Exhibit B.

Circuit in which they argued that there was a "dire emergency" and unless the court took "***immediate action*** to enjoin the sale of the Radio Stations, the FCC could approve the sale *any day*, and the sale could be consummated *any day*."[5] Despite this plea, the Ninth Circuit, for a *second* time, refused to enjoin the sale.[6] Previously, on April 29, 2021, the Ninth Circuit denied Petitioners "amended emergency motion to dismiss the receiver, terminate the receivership."[7]

II. THERE IS NO BASIS FOR FURTHER COMMISSION DELAY IN GRANTING THE APPLICATION

Petitioners have not raised any valid objection to the proposed transaction, and any further delay in granting the Application is contrary to the Commission's policy recognizing the public interest in protecting innocent creditors. During a July 1, 2021 video conference with all of the parties, a representative from the Audio Division explained that, by deferring consideration of the Application, the Division was respecting a "longstanding policy of deferring action if possible." This statement reflects an apparent misunderstanding of the controlling precedent and the negative consequences that will flow from the Commission's inaction. The FCC has long recognized the benefits both of accommodating laws designed to protect innocent creditors and of allowing stations to "continue normal operations unencumbered by the prospect of further costly and time consuming litigation."[8] The Commission's inaction here runs contrary to that precedent and ultimately threatens to disrupt the receivership and the operation of the Stations.

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[5] Emphasis in original.

[6] *See* Order dated June 21, 2021, attached hereto as Exhibit C.

[7] *See* Order dated April 29, 2021, attached hereto as Exhibit D.

[8] *E.g. Applications of Marr Broad. Co., Inc. Debtor-in-Possession Galveston, Texas for Renewal of License of Station KQQK(FM) San Jacinto Broad. Corp. Galveston, Texas for A Constr. Permit for A New FM Station*, 3 FCC Rcd. 562 (1988) (citations omitted).

At its core, the Petitioners' argument is that the Receiver does not (or soon will not) have authority to sell the Stations to VCY. Receiver and VCY submit that this issue has already been definitively decided by the District Court, as evidenced by Judge Bernal's September 10, 2020 Order. Regardless, the validity of the Receivership is an issue for the District Court. Yet Petitioners persist in asking the FCC to insert its judgment for that of the District Court. The Commission, however, has a "longstanding policy of refusing to adjudicate private contract law questions for which a forum exists in the [] courts."[9] This policy is grounded in the proposition that "the purpose of the [Communications] Act is to protect the public interest rather than to provide a forum for settlement of private disputes."[10] In the context of a receivership, such as this one, the FCC applies this policy by deferring to the findings of federal courts on issues related to the validity of the receivership.[11]

The case of *H. Edward Dillon, Receiver* is particularly instructive. There, the principal of the prior licensee asked the FCC to withhold action on an application to assign two radio stations from the receiver to the ultimate buyer while a state court adjudicated allegations of impropriety in the appointment of the receiver.[12] Despite the claims of fraud and irreparable harm if the sale were allowed to go through, the court ordered the receiver "to accomplish the closing" as soon as feasible after approval by the Federal Communications Commission. A month later, the

[9] *Listener's Guild v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987)

[10] *United Tel. Co. of the Carolinas, LLC v. FCC*, 559 F.2d 720, 723 (D.C. Cir. 1977) ("The Communications Act of 1934 should not be turned into a mechanism whereby participants in a joint communications project can force the Federal Communications Commission to arbitrate contractual disputes over the division of residual revenues from their joint venture.").

[11] *See generally Application of H. Edward Dillon, Receiver (Assignor) & Sarasota Radio Co. (Assignee) for Assignment of Licenses of Radio Stations WQSA & WQSR(FM) (Formerly WSAF-AM-FM), Sarasota, Fla.*, 42 F.C.C.2d 203, 205 (1973) ("*Dillon*").

[12] *Id.* ¶ 2.

Commission granted the assignment application. In denying the former licensee's petition for reconsideration, the FCC explained that "[t]he questions of propriety of the appointment of [the] receiver and of his actions have been before the Florida Courts," which had "refused to grant Petitioner's request" and "specifically authorized the Receiver to close the sale."[13] The Commission went on to state:

> In view of the existence of suits contesting the receivership which contain allegations of fraud in the appointment of a receiver, the Commission, in deciding whether to withhold action on the WSAF applications had to make a determination of the degree of substance to the fraud charges and weigh this determination against the public benefits of the early resumption of full service by these stations in the hands of a qualified buyer. In assaying the substance of these charges we quite properly took notice of the courts' actions in the cases which contained the charges. The Florida Courts had denied Petitioner's interlocutory appeals, had denied Petitioner's stay request and had specifically authorized the close of the transaction in the face of Petitioner's fraud charges. While these court actions may or may not constitute a final adjudication of the fraud question, in the context of all the information before the Commission, they provide the Commission with sufficient bases for determining that the request for further delay in our action on the WSAF applications was not warranted.[14]

In subsequent cases, the FCC has explained that it "will not generally question the appointment of a bankruptcy trustee or receiver where a court is seeking to protect the creditors of a financially disabled licensee."[15]

The rationale that the Commission applied in *Dillon* and its progeny applies with equal, if not greater, force here. Just as the court with oversight of the receivership in *Dillon* directed the receiver to sell the stations "as soon as possible," here the District Court directed the Receiver to close on the sale of the Stations "expeditiously." Moreover, where the FCC took notice in *Dillon* of the court's denial of the petitioner's

[13] *Id.* ¶ 5.

[14] *Id.* ¶ 6.

[15] *D.H. Overmeyer Telecasting Co., Inc.*, 94 F.C.C.2d 117, 123–24 (1983) ("*D.H. Overmeyer*").

stay request and "refus[al] to restrain the parties from consummating this transaction," here it can take notice of the repeated refusals of both the District Court and the Ninth Circuit Court of Appeals to enjoin the sale. In short, as in *Dillon*, "[w]hile these court actions may or may not constitute a final adjudication . . . , in the context of all the information before the Commission, they provide the Commission with sufficient bases for determining that . . . further delay in [its] action" on the Application is "not warranted."[16] By continuing to withhold its approval of the Application, the Commission is failing to observe "the principle of fair accommodation" between the authority of the District Court, in its creation and oversight of the receivership, and the agency, in its statutory public interest analysis.[17]

Moreover, the public interest favors the expeditious grant of the Application. Upon a grant of the Application, the Receiver will be able to complete the court-ordered sale of the Stations, which will both: (1) infuse the receivership with the funds necessary to satisfy its debts to the creditors; and (2) allow VCY to operate the stations without the threat and expense of participating in the ongoing litigation in which it has no other interest.[18]

To be clear, by granting the Application, the FCC is not tipping the scale of the receivership in any way. The District Court has already ordered the Receiver to sell the

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[16] *See Dillon* at ¶ 6.

[17] *See Radio Station WOW v. Johnson*, 326 U.S. 120, 132 (1945).

[18] *See e.g.*, *D.H. Overmyer* at ¶ 9; *In Re: Station KDEW(AM), Dewitt, Arkansas Station KDEW-FM, Dewitt, Arkansas*, 11 FCC Rcd. 13683 ¶ 10 (1996) (recognizing that "the Commission will not generally question the appointment of a bankruptcy trustee or receiver where a court is seeking to protect the creditors of a financially disabled licensee"); *Dillon* at ¶¶ 5-6; *see also O.D.T. International*, 9 FCC Rcd. 2575 ¶¶8-9 (1994) (Commission will not hear "what amount to appeals" of judicial matters).

Stations "expeditiously" and the courts have declined on multiple occasions to terminate the receivership or prevent the sale of the Stations. "To the extent that [Petitioners] dispute [] the rulings of the [District] Court, [their] remedy lies in an appeal to the appropriate federal court . . ., and not to the Commission."[19] It is only by failing to act on the Application that the Commission is altering the outcome of the District Court proceeding, tipping the scale in favor of Petitioner and essentially allowing a collateral attack on the long final orders consenting to the Receiver as Licensee.

III. CONCLUSION

For the foregoing reasons, the Commission must, under its established precedent and in furtherance of the public interest, expeditiously grant the Application and remove itself as an obstacle to the Court Ordered disposition of the receivership assets.

Respectfully submitted,

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July 8, 2021

[19] *In Re Applications of Dale J. Parsons, Jr.*, 10 FCC Rcd. 2718 ¶ 13 (1995).

Exhibit A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 16-600 JGB (SPx)**	Date	March 18, 2021
Title	***WB Music Corp., et al. v. Royce International Broadcasting Corp., et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order (1) DENYING Defendant's Motion to Discharge the Receiver (Dkt. No. 369)

Before the Court is a Motion to Discharge the Receivership filed by Defendants Golden State Broadcasting LLC, Play Del Sol Broadcasters, Royce International Broadcasting Corporation, Silver State Broadcasting LLC, and Edward R. Stolz II ("Defendants"). ("Motion," Dkt. No. 369.) After considering the papers filed in support of and in opposition to the Motion as well as argument at a hearing on March 10, 2021, the Court DENIES the Motion.

I. BACKGROUND

The Court relates only those portions of the background of this case germane to the instant Motion. The Court entered final judgment on May 22, 2018 against Defendants, awarding Plaintiffs $330,000 in statutory damages. (Dkt. No. 190.) The Court awarded Plaintiffs $864,278.75 in attorneys' fees and $43,333.34 in costs on July 9, 2018. (Dkt. No. 200.) On August 6, 2018, the Court consolidated all judgments, costs, and fees into a single sum due by Defendants. ("Amended Judgment," Dkt. No. 209.)

Defendants, however, did not immediately satisfy the Amended Judgment. Instead, nine months of evasive maneuvers ensued. Finally, on June 14, 2019, Plaintiffs moved for contempt sanctions and for the appointment of a receiver. (Dkt. Nos. 237, 239.) The Court gave Defendants over a year beyond the date of those motions to satisfy the Amended Judgment. Finally, on July 6, 2020, Defendants' post-judgment conduct forced the Court to appoint a receiver, W. Lawrence Patrick ("the Receiver" or "Mr. Patrick"), on July 6, 2020, to oversee Defendants' radio stations. ("Order Appointing Receiver," Dkt. No. 284.)

Finally, on November 12, 2020, Defendants deposited $1,301,523.16 with the Court, satisfying the Amended Judgment. (Dkt. No. 333.) On November 20, 2020, the Court awarded Plaintiffs $230,178.50 in post-judgment costs and fees. ("Second Fee Award," Dkt. No. 337.) On January 13, 2021, the Court determined that the amounts of the Second Fee Award and other outstanding amounts owed totaled $384,124.20. ("Second Amended Judgment," Dkt. No. 350.) On February 3, 2021, Defendants deposited $384,150.00 with the Court. (Dkt. No. 367.)

Defendants filed this Motion on that same day. The Receiver opposed on February 14, 2021. ("Opposition," Dkt. No. 377.) Interested party Bellaire Tower Homeowners Association opposed on that same day. ("Bellaire Towers Opposition," Dkt. No. 378.) Defendants replied in support of the Motion on February 22, 2021. ("Reply," Dkt. No. 382.) Interested party VCY America, Inc. filed a statement of interest on March 3, 2021. (Dkt. No. 398.) Defendants filed a status report in support of the Motion on March 11, 2021. ("Status Report," Dkt. No. 409.)

II. LEGAL STANDARD

Cal. Civ. Proc. § 708.620 provides that "[t]he court may appoint a receiver to enforce the judgment where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment." Similarly, Rule 66 of the Federal Rules of Civil Procedure ("Rules") allows the appointment of a receiver.

When to terminate a receivership is much less clear. At common law, a person was entitled to have a receivership terminated and his property returned to him upon full payment of a debt or judgment. Milwaukee & M.R. Co. v. Soutter, 69 U.S. 510, 521–22 (1864). However, courts more recently have found that "it is discretionary and not incumbent upon the court to dismiss the receiver when the debt is discharged." Consol. Rail Corp. v. Fore River Ry. Co., 861 F.2d 322, 327–28 (1st Cir. 1988). See also, e.g., Sec. & Exch. Comm'n v. An-Car Oil Co., 604 F.2d 114, 119 (1st Cir. 1979) ("[t]he district court possesses a broad range of discretion in deciding whether or not to terminate an equity receivership"); Milo v. Curtis, 100 Ohio App. 3d 1, 8, 651 N.E.2d 1340, 1345 (1994) (court must consider "any relevant equitable considerations" before terminating a receivership and find "some cognizable need or risk of unfair prejudice" in order to continue it).

Generally, a court will not entertain a motion for termination of a receivership until the Receiver prepares a final accounting. 65 Am. Jur. 2d Receivers § 146. For example, a court in the District of Hawaii considering a disputed question of terminating a receivership required the receiver to "file a final accounting with the Court" and "perform any other action necessary to wind up the receivership" by a specified date before parties could file a motion to terminate the receivership. Bruser v. Bank of Hawaii, No. CV 14-00387 LEK-RLP, 2020 WL 5845713, at *5 (D. Haw. Sept. 30, 2020)

III. DISCUSSION

Defendants move the Court to terminate the receivership because they allege that they have fully satisfied the judgments issued in this case. (Motion at 2.) The Receiver does not dispute that the Defendants have satisfied the judgements; rather, he opposes dissolution of the receivership on the grounds that the Court has already approved the sale of the radio stations at issue in the case, and sale of these stations is necessary to pay all outstanding debts of the receivership estate, include a judgment in a second case and the expenses of the Receiver and his employees. (Opposition at 2-3.)

Termination of a receivership is an equitable question, and unfortunately, neither the legal nor the factual equities favor Defendants. The caselaw supports continuation of the receivership. The court in Consolidated Railroad Corporation declined to terminate a receivership where a debt was satisfied until the debts of non-party creditors had been satisfied as well: "In this way the court can ensure that the receiver will not deplete all of the debtor's assets on behalf of one creditor, leaving other creditors without remedy." 861 F.2d at 327–28. In that case, the appellate court affirmed the district court's decision to "retain jurisdiction until it is satisfied that Conrail has collected the funds due to it and that collection thereof by the receiver has not unfairly prejudiced [defendant's] other creditors." Id. at 328. That logic, in a nearly identical procedural posture, is applicable to the instant case as well. Defendants owe at least one other creditor a sum that has been reduced to judgment, and Mr. Patrick has been appointed Receiver in that case as well. (See Bellaire Towers Opposition.) Under Consolidated Railroad Corporation, the Court is within its discretion to prolong the receivership in order to ensure that the satisfaction of the judgments in the instant case has not prejudiced other creditors.

Additionally, as outlined above, courts normally do not terminate receiverships until the Receiver prepares a final accounting. This makes logical sense: a court must ensure that a receiver will be compensated for his time managing the property of one of the parties. So too in this case. The Receiver has indicated that he has outstanding bills to collect, and Defendants have indicated that they intend to challenge those amounts. (Opposition at 2-3; Reply at 4-6.) As other district courts in the Ninth Circuit have done, the Court declines to terminate the receivership until those amounts are determined.

The Court is not required to prolong the receivership until these amounts are satisfied; indeed, as Defendants point out, the Court could terminate the receivership at this juncture. (Status Report at 2.) However, the factual equities do not favor Defendants. The Court was forced to appoint the Receiver because Defendants failed to satisfy the Amended Judgment for two years. The Court simply cannot trust Defendant Ed Stolz's representations that he will satisfy amounts due in the future.

IV. CONCLUSION

For the reasons above, the Court DENIES Defendants' Motion.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 16-600 JGB (SPx)**	Date	June 2, 2021
Title	***WB Music Corp., et al. v. Royce International Broadcasting Corp., et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order Regarding Termination of Receivership

The Court, having entered the Third Amended Judgment (Dkt. No. 429) and considered Defendants' Request for Updated Status Re: Termination of Receivership (Dkt. No. 428), finds that termination of the receivership in the instant case prior to satisfaction of the Third Amended Judgment and accounting by the Receiver is premature. Thus, the Court orders as follows:

1. Within ten calendar days of the satisfaction of the Third Amended Judgment by Defendants, the Receiver shall file a Motion for an Accounting of Costs.

2. Defendants may oppose, and the Receiver may reply in support of, the Receiver's Motion according to the standard briefing schedule for civil motions.

3. The Court will issue an order regarding compensation for the Receiver.

4. Upon satisfaction of the Receiver's accounting by Defendants, the Court will terminate the Receivership.

IT IS SO ORDERED.

Exhibit B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 16-600 JGB (SPx)**	Date	October 9, 2020
Title	***WB Music Corp., et al. v. Royce International Broadcasting Corp., et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order DENYING Defendants' Ex Parte Application for Order to Discharge the Receiver and Terminate the Receivership (Dkt. No. 308) (IN CHAMBERS)**

Before the Court is an ex parte application for an order to discharge the receiver and terminate the receivership upon satisfaction of judgment filed by Defendants Royce International Broadcasting Corporation, et al. ("Application," Dkt. No. 303.) The Court finds the Application appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and in opposition to the Application, the Court DENIES the Application.

I. BACKGROUND

On June 21, 2017, the Court granted Plaintiffs' motion for partial summary judgment, finding that Defendants were jointly and severally liable for infringing the rights of public performance in the copyrights of eleven musical works. (Dkt. No. 79.) On March 13, 2018, a jury determined that Defendants' eleven acts of infringement were willful and awarded Plaintiffs statutory damages totaling $330,000. (Dkt. No. 164.) On May 22, 2018, the Court filed a Judgment awarding Plaintiffs $330,000 in statutory damages, as well as post-judgment interest from the date of issue. (Dkt. No. 190.) On August 6, 2018, the Court filed an Amended Judgment, awarding Plaintiffs $330,000 in statutory damages; $864,278.75 in attorneys' fees; $43,333.34 in non-taxable costs; and $11,951.37 in taxable costs, totaling $1,249,563.46, as well as post-judgment interest from the date of issue of the Amended Judgement. (Dkt. No. 209.)

On July 6, 2020, this Court granted Plaintiffs' renewed motion to appoint a receiver in aid of post-judgment execution. ("Receivership Order," Dkt. No. 284.) The Receivership Order appointed W. Lawrence Patrick Communications, LLC as the Receiver over Defendants' radio stations KREV, KFRH and KRCK, and authorized the Receiver to solicit offers for the sale of Defendants' radio stations' assets. (Id. ¶¶ A, D.)

On August 17, 2020, the Receiver filed a request to submit an offer to purchase the radio stations for in camera review. (Dkt. No. 292.) The Court granted the Receiver's request on September 10, 2020. (Dkt. No. 303.) Defendants submitted a response to the Order, stating "no objection to the offer being submitted to the Court for in camera review" but asserting "a right to potentially object and to be heard prior to the Court's approval of any offer for sale of any of the radio station(s)." (Dkt. No. 305.) On that same day, after an in camera review of the offer, the Court filed an order authorizing the Receiver to accept the offer to purchase Defendants' radio stations. ("Order Authorizing Offer," Dkt. No. 307.)

Defendants filed the Application on September 21, 2020. Plaintiffs filed an opposition on September 22, 2020, ("Pls.' Opp'n," Dkt. No. 310), as did Receiver W. Lawrence Patrick ("Receiver Opp'n," Dkt. No. 311). Defendants replied on the same date. ("Reply," Dkt. No. 311.) On September 23, 2020, a third opposition to the Application was filed by third party Bellaire Tower Homeowners Association. ("Bellaire Opp'n," Dkt. No. 312.)

II. DISCUSSION

Defendants move ex parte to dismiss the Receiver appointed by the Court and terminate the Receivership upon satisfaction of the Amended Judgment. (App. at 4.) Ex parte relief requires a moving party to show "irreparable prejudice[ ] if the underlying motion is heard according to regular noticed motion procedures." Mission Power Eng'g Co. v. Cont'l Cas. Co., 883 F. Supp. 488, 492 (C.D. Cal. 1995). In addition, the moving party must establish it is "without fault in creating the crisis that requires ex parte relief, or that the crisis occurred as a result of excusable neglect." Id.

First, Defendants assert that they will suffer irreparable harm if the radio stations are sold at a "fire sale" "at a fraction of their fair market value over the owners' objection and without their involvement in the process." (Reply at 2.)[1] They argue that the monetary value of the radio stations is "disproportionately high" compared to any outstanding amounts, and that the non-monetary value, including the potential effect on current employees, Edward Stolz's professional reputation, and the goodwill of the radio stations is even greater. (Reply at 1-2.)

[1] Defendants for the first time address the requirements of an ex parte application in their reply, neglecting to make a showing that ex parte relief is appropriate in their Application. Although courts may decline to consider arguments raised for the first time in a reply brief, Cedano–Viera v. Ashcroft, 324 F.3d 1062, 1066 n. 5 (9th Cir.2003), the Court considers Defendants' arguments.

The Court disagrees. The Court appointed a Receiver only after providing Defendants ample opportunity to sell the radio stations through their chosen broker to satisfy the Amended Judgment, to no avail. Moreover, the Receivership Order required the Receiver to report to the Court any firm offers for purchase, and established that any sale would be subject to the Court's approval. (Receivership Order, ¶¶ D, E.) Despite Defendants' failure to provide the necessary documents and items for the Receiver to carry out its duties, the Receiver secured a bona fide offer to purchase the radio stations. After reviewing the offer to purchase the radio stations, along with the Receiver's recommendation that the offer be accepted, the Court authorized the Receiver to accept the offer. (Order Authorizing Offer.) The Court is therefore unpersuaded by Defendants' characterization of this process as a "fire sale," or by their assertion of harm. In any case, at this stage, given their repeated stonewalling and non-compliance, any harm to Defendants by the Receiver's sale of the radio stations would be self-inflicted.

Second, Defendants argue that they were without fault in creating the conditions requiring ex parte relief because they were excluded from the in camera process to review and approve the offer, despite requesting the opportunity to object to the amount of the sale. (Reply at 2.) The Court again disagrees. Pursuant to the Receivership Order, during the August 17, 2020 status conference, the Receiver informed the Court and Defendants of the existence of a bona fide, all-cash offer to purchase the radio stations. On that same day, the Receiver submitted a request for in camera review of the offer. (Dkt. No. 292.) Defendants did not respond to the Receiver's notification of an offer or to their request for in camera review for more than three weeks, after the Court granted the in camera request. (Dkt. No. 305.) Further, Defendants did not file this Application until September 21, 2020, eleven days after the Court's Order authorizing the Receiver to accept the purchase offer. (Dkt. No. 308.) Defendants' Application also conveniently ignores Defendants' repeated stonewalling, failure to comply with the Court's orders, and inexplicable delay in taking steps to satisfy the Amended Judgment, all of which led the Court to approve the receivership in the first place. Thus, not only have Defendants failed to establish that they were without fault in creating the "crisis" requiring ex parte relief, but it is apparent that they alone created this "crisis."

The Court therefore denies Defendants' Application for failure to justify the need for ex parte relief. See, e.g., Sec. & Exch. Comm'n v. Private Equity Mgmt. Grp., LLC, 2009 WL 10676179, at *3 (C.D. Cal. June 1, 2009) (denying an ex parte application for failure to demonstrate the necessity of bypassing regular motion procedures); Dillard v. Macy's, Inc., 2018 WL 6265043 (C.D. Cal. Feb. 14, 2018) (same).

The Court notes that, given Defendants' repeated failure to comply with the Court's post-judgment orders, the Court has limited confidence in Defendants' commitment to satisfy the Amended Judgment expeditiously. If Defendants wish to attempt to prevent the sale of the radio stations by satisfying the Amended Judgment and other post-judgment costs, they are welcome to do so. The Court will not entertain discharging the Receiver and terminating the Receivership absent evidence of satisfaction of the Amended Judgment.

III. CONCLUSION

For the reasons above, the Court DENIES Defendants' Application.

IT IS SO ORDERED.

Exhibit C

FILED

JUN 21 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: ROYCE INTERNATIONAL BROADCASTING CORPORATION; et al.

ROYCE INTERNATIONAL BROADCASTING CORPORATION; et al.,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE,

Respondent,

WB MUSIC CORP.; et al.,

Real Parties in Interest.

No. 21-71129

D.C. No.
5:16-cv-00600-JGB-SP
Central District of California,
Riverside

ORDER

Before: SILVERMAN, NGUYEN, and R. NELSON, Circuit Judges.

Petitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Petitioners state that they challenge the district court's orders dated July 6, 2020, March 18, 2021, and June 2, 2021. However, they have not shown that appeal of these orders is unavailable. *See Calderon v. U.S. Dist. Court*, 137 F.3d 1420, 1421 (9th Cir. 1988) ("Mandamus is

not to be used as a substitute for an appeal."). Petitioners could have challenged the July 6, 2020 order by way of appeal, but the time to file a notice of appeal has expired. Petitioners' appeal of the district court's March 18, 2021 order is pending in No. 21-55264. No notice of appeal has yet been filed of the June 2, 2021 order.

In addition, the district court did not abuse its discretion, let alone commit clear error, in its June 2, 2021 order requiring the receiver promptly to submit an accounting and providing that the receivership will terminate upon satisfaction of that accounting. *See SEC v. Capital Consultants, Inc.*, 397 F.3d 733, 738 (9th Cir. 2005) (district court decision regarding supervision of equitable receivership reviewed for abuse of discretion) (citation omitted); *Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court*, 408 F.3d 1142, 1146 (9th Cir. 2005) (not all *Bauman* factors must be met, but "the absence of the third factor, clear error, is dispositive.") (citation omitted).

Accordingly, the petition is denied.

No further filings will be entertained in this closed case.

DENIED.

Exhibit D

FILED

APR 29 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WB MUSIC CORP.; et al., Plaintiffs-Appellees, v. ROYCE INTERNATIONAL BROADCASTING CORPORATION; et al., Defendants-Appellants, _____ W. LAWRENCE PATRICK, Receiver-Appellee.	No. 21-55264 D.C. No. 5:16-cv-00600-JGB-SP Central District of California, Riverside ORDER

Before: MURGUIA and BRESS, Circuit Judges.
Concurrence by Judge BRESS.

Appellants' motion to file an oversized motion (Docket Entry No. 5) is granted.

Appellants' amended emergency motion to dismiss the receiver, terminate the receivership, and enjoin the sale of radio stations (Docket Entry Nos. 3 & 7) is denied.

Appellee W. Lawrence Patrick's request to dismiss this appeal (contained in Docket Entry No. 8) is denied. *See* 28 U.S.C. §1292(a)(2); *SEC v. Am. Principals Holdings, Inc.*, 817 F.2d 1349 (9th Cir. 1987).

AT/MOATT

The existing briefing schedule remains in effect.

BRESS, Circuit Judge, Concurring.

I concur in the denial of emergency relief because Appellants have not made a sufficient showing. I note, however, that I view this denial as without prejudice to Appellants, upon a proper showing, demonstrating compliance with court orders sufficient to obviate the need to sell their radio licenses.

CERTIFICATE OF SERVICE

I, Dawn M. Sciarrino, an attorney in the law firm of Sciarrino & Shubert, PLLC, hereby state under penalty of perjury that the forging **SUPPLEMENTAL PLEADING IN SUPPORT OF PROMPT DISPOSITION OF ASSIGNMENT APPLICATION** was mailed to the following on this 8th day of July 2021:

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Federal Communications Commission

_____/s/ Dawn M. Sciarrino_____
Dawn M. Sciarrino

* via email only