

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-026520-CA-01

SECTION: CA44

JUDGE: Lisa Walsh

Stephen Ezekiel Joseph et al

Plaintiff(s)

vs.

Daily Bread, LLC

Defendant(s)

_____/

**ORDER BARRING, RESTRAINING, AND ENJOINING CLAIMS AGAINST TIMOTHY
KIRKWOOD**

THIS MATTER came before the Court on the Motion for Approval of Order Barring, Restraining and Enjoining Claims Against Timothy Kirkwood [Filing # 164004849] (the “Motion”) filed by Scott M. Diamond (“Receiver”), as Receiver of Daily Bread, LLC. (“Daily Bread”), appointed pursuant to this Court’s Order of December 14, 2021, in the above-captioned case (the “Daily Bread Action”).

The Court held a hearing on February 24, 2023 to consider the Motion and hear objections, if any.

By way of the Motion, the Receiver requests entry of a bar order (the “Bar Order”) enjoining any and all persons (excluding any federal or state governmental bodies or agencies) from commencing or continuing litigation or other pursuit of any and all claims against Timothy Kirkwood (“Mr. Kirkwood”) that relate in any manner to those events, transactions and circumstances arising out of the facts related to Daily Bread or the Daily Bread Action.

The Motion and related documents were served by email on all identifiable interested parties and posted on the receivership website at <http://dailybreadllcreceivership.com>.

This Court is fully advised of the issues in the above-captioned case, as it has previously heard argument concerning the events, circumstances, and transactions of Daily Bread, which resulted in the appointment of the Receiver.

In addition, the Court has read and considered the Motion, the Settlement Agreement, other relevant filings of record, and the arguments and evidence presented at the hearing. The court incorporates into this order all oral findings and conclusions made on the record at the hearing on this matter. The Court FINDS AND DETERMINES as follows:

A. The Court has jurisdiction over the subject matter, including, without limitation, jurisdiction to consider the Motion and the Bar Order, and authority to grant the Motion and enter the Bar Order. *See* Fla. Const. Art. V, § 5(b); Fla. Stat. § 26.012(2)(c) (2022); *In re U.S. Oil & Gas Litig.*, 967 F.2d 489 (11th Cir. 1992) (affirming the approval of a settlement bar order in a class action); *Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) (affirming authority of the bankruptcy court to enter bar orders to facilitate a settlement); *Brophy v. Salkin*, 550 B.R. 595, 602 (S.D. Fla. 2015) (granting motion for bar order based upon propriety of settlement); *see also Sec. & Exch. Comm'n v. Kaleta*, 530 F. App'x. 360 (5th Cir. 2013) (affirming approval of settlement and bar order in a civil enforcement action)..

B. The service of the Motion, the proposed Bar Order, and the corresponding Notice of Hearing, as well as their posting on the receivership website, constitutes good and sufficient notice, and is reasonably calculated under the circumstances to notify all affected persons of the Motion and the proposed Bar Order, and of their opportunity to object thereto, of the deadline for objections, and of their opportunity to appear and be heard at the hearing concerning these matters. Accordingly, all affected parties were furnished a full

and fair opportunity to object to the Motion and the Bar Order and all matters related thereto and to be heard at the hearing; therefore, the foregoing service of complied with all requirements of applicable law.

C. The Court has allowed any investors, creditors, objectors, and parties to the Daily Bread Action to be heard if they desired to participate. Each of these persons or entities has standing to be heard on these issues.

Anyone with an interest in the Daily Bread Action should have become aware of the Motion and Bar Order and have been provided sufficient information to put them on notice how to obtain more information and/or object, if they wished to do so.

The Bar Order is tailored to matters relating to the Barred Claims and is appropriate to assist in maximizing the value of the Receivership estate and insuring for a more-prompt distribution of proceeds for the benefit of the investors and other creditors.

The interests of persons affected by the Bar Order were well represented by the Receiver, acting in the best interests of the Receivership estate in his fiduciary capacity.

Accordingly, the Parties have shown good reason for the approval of the Bar Order to proceed expeditiously.

Therefore, there is no just reason for delay of the finality of this Order.

Based on the foregoing findings and conclusions, the Court ORDERS, ADJUDGES, AND DECREES as follows:

1. The Motion is GRANTED in its entirety. Any objections to the Motion or the entry of this Order are overruled to the extent not otherwise withdrawn or resolved.
2. The Bar Order as set forth in paragraph e of this Order is APPROVED.

3. BAR ORDER AND INJUNCTION: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE

BARRED CONDUCT AGAINST TIMOTHY KIRKWOOD WITH RESPECT TO THE

BARRED CLAIMS, as those terms are herein defined.

- a. The “**Barred Persons**”: Any non-governmental person or entity, including, without limitation, (i) owners, officer and directors, limited and general partners, investors, and creditors of Daily Bread or the Receivership; or (ii) any person or entity claiming by or through such persons or entities, all and individually, directly, indirectly, or through a third party, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever;
- b. The “**Barred Conduct**”: instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;
- c. The “**Barred Claims**”: any and all claims, actions, lawsuits, causes of action, investigation, demand, complaint, cross-claims, counterclaims, or third-party claims

- or proceeding of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States, whether arising under local, state, federal or foreign law; that in any way relate to, are based upon, arise from, or are connected with the released claims or interests of any kind as set forth in the Settlement Agreement, with the Receivership including but not limited to those events, transactions and circumstances alleged in the Daily Bread Action;
- d. The Bar Order shall not apply (i) to the United States of America, its agencies or departments, or to any state or local government and its agencies or departments; or (ii) to the Parties' respective obligations under the Settlement Agreement. The Bar Order shall not prohibit any Barred Person from responding to any governmental investigation or action or responding to any other legal requirement.
- e. Nothing in this Order, nor the performance of the Parties' obligations thereunder, shall in any way impair, limit, modify or otherwise affect the rights of the Receiver or any Barred Persons against any party other than Timothy Kirkwood.
4. This Order is a final order for all purposes, including, without limitation, for purposes of the time to appeal or to seek rehearing or reconsideration.
5. This Order shall be served by counsel for the Receiver via email, first class mail or international delivery service, on any person or entity afforded notice, as well as be posted on the receivership website.
6. Without impairing or affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction to construe, interpret and enforce this Order, including, without limitation, the injunction, Bar Order and releases herein.

7. Any Daily Bread investor that seeks to pursue a claim against Mr. Kirkwood for Daily Bread investment losses following entry of this Order must first demonstrate that Mr. Kirkwood materially breached or intentionally misrepresented any of the “Representations and Warranties” listed in Paragraph 4 of the Settlement Agreement (a “Material Breach”). Any such investor must file a motion (giving Mr. Kirkwood, all other parties, and the Receiver sufficient notice and an opportunity to respond) seeking leave of this Court to pursue such claim, and relief from this Order shall only be provided upon the Court finding that the investor has satisfied its burden of demonstrating a Material Breach by a preponderance of the evidence.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 28th day of February, 2023.

2021-02-520-CA-01 02-28-2023 4:04 PM


2021-026520-CA-01 02-28-2023 4:04 PM

Hon. Lisa Walsh

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on THIS MOTION

CLERK TO RECLOSE CASE IF POST JUDGMENT

Electronically Served:

Adam L Schwartz, aschwartz@homerbonner.com

Adam L Schwartz, dthomas@homerbonner.com

Adolfo E. Jimenez, adolfo.jimenez@hklaw.com

Adolfo E. Jimenez, anabel.pargas@hklaw.com

Alexander M Peraza, aperaza@dkrpa.com

Brian Lechich, aschwartz@homerbonner.com

Brian Lechich, pjimenez@homerbonner.com

Brian Lechich, blechich@homerbonner.com

Cary Aronovitz, cary.aronovitz@hklaw.com

Cary Oren Aronovitz, adolfo.jimenez@hklaw.com

Cary Oren Aronovitz, anabel.pargas@hklaw.com
David A Freedman, dfreedman@coffeyburlington.com
David A Freedman, mpalmero@coffeyburlington.com
David A Freedman, service@coffeyburlington.com
Erin Bryan, bryan.erin@dorsey.com
Lorenz Michel Pruss, lpruss@dkrpa.com
Lorenz Michel Pruss, mlopez@dkrpa.com
Lorenz Michel Pruss, veronica@dkrpa.com
Martin G. Zilber, mgz@khllaw.com
Martin G. Zilber, eservicemia@khllaw.com
Scott M Dimond, scott@dkrpa.com
Scott M Dimond, mlopez@dkrpa.com

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