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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**MOTION TO LIFT LITIGATION STAY
TO ALLOW SETTLEMENT OF
SHEPARD TAX COURT LITIGATION**

Civil No. 2:15-cv-00828-DN

The Honorable David Nuffer

Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC, International Automated Systems, Inc., and LTB1, LLC (collectively “RaPower-3”), as well as certain subsidiaries and entities affiliated with RaPower-3 and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”), hereby submits this motion (“Motion”) seeking a lift of the stay of litigation to allow a settlement of litigation pending in the United States Tax Court relating to Shepard and his wife, Diana C. Shepard.

I. BACKGROUND

Pursuant to paragraphs 44 to 48 of the Corrected Receivership Order (“Order”),¹ most civil proceedings (“Ancillary Proceedings”) involving the Receiver, Receivership Estate assets, or Defendants are stayed. If the Receiver determines that action should be taken in one of the Ancillary Proceedings, the Receiver is to seek a lift of the stay of litigation from this Court prior to taking any action in the Ancillary Proceeding.² In support of his Motion, the Receiver states as follows:

1. On information and belief, Shepard and his wife, Diana C. Shepard, are parties to pending litigation in the United States Tax Court, Case No. 002826-18 (“Shepard Tax Court Case”).

2. Skyler K. Bradbury, an attorney with the IRS Office of Chief Counsel, informed the Receiver that an agreement has been reached by Shepard, his wife, and the IRS (“Tax Court Parties”) to resolve the Shepard Tax Court Case. The Tax Court Parties have requested that the Receiver move to lift the litigation stay to allow the Tax Court Parties to have the Tax Court enter orders resolving the Shepard Tax Court Case.

3. Counsel for the IRS Office of Chief Counsel has represented to the Receiver that resolution of the Shepard Tax Court Case will allow the IRS to assess tax, penalties, and interest against the Shepards for the tax years at issue. However, the assessment would be treated as a “fifth priority” claim under the Receivership Order,³ such that it would not result in any claim against Receivership Estate assets until the first four priorities are satisfied. In the event the

¹ [Docket No. 491](#).

² [Id.](#) at ¶ 48.

³ [Id.](#) at ¶ 89.

Receivership Estate makes distributions to persons and entities having fifth priority claims, the IRS claim would have the same priority as lens purchasers who do not otherwise qualify as third priority claimants and non-purchaser claimants.

4. The Receiver is informed that counsel for the United States, Plaintiff in this matter, does not object to the relief being sought in this motion.

II. ANALYSIS

5. The Receiver believes that so long as Receivership Estate assets are not impaired, he has no basis to oppose the proposed settlement and that the litigation stay should not operate to bar resolution of the Shepard Tax Court Case.

6. Accordingly, the Receiver requests that the Court lift the litigation stay to allow the Tax Court Parties to execute documents resolving their dispute and to allow the Tax Court to enter any orders necessary to resolve matters pending before the Tax Court. This Motion is specifically conditioned on the following conditions and limitations:

a. The IRS assessments of taxes, penalties, interest or any other form of relief against Shepard will be treated as a fifth priority claim against Receivership Estate assets and the IRS will take no steps to execute on, place liens upon, seize, or otherwise attempt to collect or recover assets that the Receiver asserts are part of the Receivership Estate. To protect its interest, the IRS may take collection actions on assets of Diana C. Shepard, including filing a Notice or Notices of Federal Tax Lien;

b. Any interest that the IRS claims against the Shepards' residence,⁴ which is titled in the name of the Diana C. Shepard Revocable Trust, shall be subordinated to the claims of the Receiver. So long as the Receiver notifies the IRS that the Receiver is

⁴ The Shepards' residence is located at 858 W. Clover Meadow Dr., Salt Lake City, UT 84123.

asserting that the Shepard residence is a Receivership Estate asset, the IRS shall not seek to enforce any claims against the Shepard residence. If the Shepards' residence is found not to be a Receivership Estate asset, the IRS may enforce its interests in the residence. The Receiver is authorized to cooperate and coordinate with the IRS to assert control over the Shepard residence;

c. The Tax Court Parties will provide the Receiver with a copy of any executed settlement agreement or other documents resolving the Shepard Tax Court Case for his review before the documents are submitted to the Tax Court for action; and

d. The stay will be lifted for the sole purpose of allowing the Tax Court Parties to settle the Shepard Tax Court Case. If a settlement agreement is not submitted and the Shepard Tax Court Case is not dismissed within sixty days of the Court's order lifting the stay, the Shepard Tax Court Case will automatically be stayed pursuant to paragraphs 44 to 48 of the Order.

Accordingly, the Receiver hereby requests that the Court grant this Motion and lift the stay on the Shepard Tax Court Case as described above.

A proposed Order is submitted herewith.

DATED this 5th day of April, 2019.

PARR BROWN GEE & LOVELESS

/s/ Michael S. Lehr
Jonathan O. Hafen
Michael S. Lehr
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION TO LIFT LITIGATION STAY TO ALLOW SETTLEMENT OF SHEPARD TAX COURT LITIGATION** was electronically filed with the Clerk of the Court through the CM/ECF system on April 5, 2019, which sent notice of the electronic filing to all counsel of record.

IT IS FURTHER CERTIFIED that, on the same date, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

Neldon Johnson
2730 W 4000 South,
Oasis, UT 84624

R. Gregory Shepard
858 Clover Meadow Dr.
Murray, Utah 84123

Pro se Defendants

/s/ Michael S. Lehr