

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF NORTH CAROLINA  
 CHARLOTTE DIVISION

Michael J. Quilling, Receiver	)	<b>Case No. 3:04-CV-251</b>
for Frederick J. Gilliland,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>MOTION TO AMEND ORDER TO</b>
	)	<b>INCLUDE CERTIFICATION FOR</b>
Grand Street Trust, Grand	)	<b>INTERLOCUTORY APPEAL AND TO</b>
Street Trust, Heartland	)	<b>STAY PROCEEDING PENDING APPEAL</b>
Control Trust, Future Control	)	
Trust, Marie Margarite Gueco	)	
Mercado Paquette, Rein Evans	)	
Sestanovich, L.L.P. f/k/a	)	
Dressler Rein Evans &	)	
Sestanovich, L.L.P., Melrose	)	
Escrow, Inc., and Paul J.	)	
Cohen,	)	
	)	
Defendants.	)	

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Defendant Rein Evans Sestanovich, L.L.P. f/k/a Dressler Rein Evans & Sestanovich, L.L.P. ("Rein Evans"), by and through undersigned counsel, hereby respectfully moves the Court to amend the Court's Order, dated August 12, 2005 denying Defendant Rein Evans's motion to dismiss. Rein Evans moves the Court to amend the order to include certification for interlocutory appeal. Rein Evans also moves the Court to stay the proceeding in this Court until such time as the Fourth Circuit Court of Appeals decides the request for an interlocutory appeal, and if granted, until such time as the Court of Appeals issues its

mandate following the appeal. In support of its motion, Rein Evans respectfully states as follows:

1. A district court may certify an interlocutory order as appropriate for immediate appeal by stating "that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation . . . ." 28 U.S.C. § 1292(b) (2005).

2. If a district court's order does not initially include the certification, the district court may amend the order to include the required statement for certification. Fed. R. App. P. 5(a)(3).

3. Rein Evans moved to dismiss the Receiver's Complaint on the grounds that: (1) the claims asserted therein were barred by the applicable statute of limitations; (2) this Court lacked personal jurisdiction over Rein Evans; and (3) the Receiver lacked standing to assert claims on behalf of allegedly defrauded investors instead of the Receivership estate itself.

4. All three grounds meet the requirements for certification in that they involve a controlling question of law as to which there is substantial ground for a difference of opinion and an immediate appeal from the order may materially

advance the ultimate termination of the litigation. See 28 U.S.C. § 1292(b).

5. 28 U.S.C. § 1292(b) provides in part: "...application for appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order." Rein Evans moves this Court to stay the proceedings herein until such time as the Fourth Circuit Court of Appeals decides the request for an interlocutory appeal, and if granted, until such time as the Court of Appeals issues its mandate following the appeal. Staying the action in this Court while the interlocutory appeal is proceeding will conserve the time and resources of the parties and of the Court, in the event that the Fourth Circuit determines any of the issues on appeal in favor of Rein Evans.

WHEREFORE, Rein Evans respectfully moves the Court for an Order:

1. Amending the Order entered in this proceeding on August 12, 2005 to certify an interlocutory appeal of the denial of Defendant Rein Evans's motion to dismiss;

2. Staying the proceedings herein until such time as the Fourth Circuit Court of Appeals decides the request for an interlocutory appeal, and if granted, until such time as that court issues its mandate following the appeal.

3. For such other and further relief that the Court deems just and proper.

This the 29th day of August, 2005.

RAYBURN COOPER & DURHAM, P.A.

By: S/ David S. Melin  
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*Attorneys for Defendant Rein Evans  
Sestanovich, L.L.P.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing MOTION TO AMEND ORDER TO INCLUDE CERTIFICATION FOR INTERLOCUTORY APPEAL AND TO STAY PROCEEDING PENDING APPEAL was served on this date upon the parties who have appeared in this action, postage prepaid, as follows:

Michael J. Quilling, Esq.  
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Marie Margarite Gueco Mercado Paquette  
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and Future Control Trust  
2701 Cartier Street  
Calgary, Alberta, Canada T2T 3J5

This the 29th day of August, 2005.

S/ David S. Melin  
David S. Melin