

**** FILED: BROWARD COUNTY, FL Brenda D. Forman, CLERK 12/12/2019 4:30:00 PM.****

IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO: CA10-049061 (12)

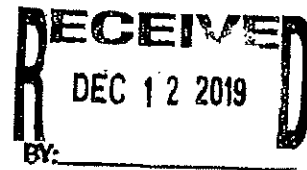
DANIEL S. NEWMAN, as Receiver for
FOUNDING PARTNERS STABLE VALUE
FUND, L.P., FOUNDING PARTNERS
STABLE VALUE FUND II, LP; FOUNDING
PARTNERS GLOBAL FUND, LTD.;
and FOUNDING PARTNERS HYBRID-VALUE
FUND, LP,

Plaintiff,

vs.

ERNST & YOUNG, LLP, a Delaware Limited
Liability Partnership, and MAYER BROWN, LLP,
an Illinois Limited Liability Partnership,

Defendants.



**ORDER ON MAYER BROWN LLP'S MOTION FOR PARTIAL SUMMARY
JUDGMENT AND MOTION IN LIMINE REGARDING SETOFF OF RECEIVER'S
SETTLEMENT WITH SUN**

This cause came before the Court on Mayer Brown LLP's ("Mayer Brown") Motion for Partial Summary Judgment Regarding Setoff of Receiver's Settlement with Sun and Motion in Limine Regarding Setoff of Receiver's Settlement with Sun ("Motions"). Having reviewed the Motions, responses, replies, court file, and having heard argument of counsel, it is hereby **ORDERED** that Mayer Brown's Motions are **GRANTED**.

First, Mayer Brown is entitled to a setoff as the Receiver-Sun settlement operated to release Sun Capital and related persons/entities in partial satisfaction for damages sought in connection with the instant case, that being Sun Capital's failure to repay monies borrowed from Stable-Value I. *See* § 46.015, Fla. Stat. ("[i]f any person shows the court that the plaintiff, or his or her legal representative, has delivered a written release or covenant not to sue to any person in partial satisfaction of the damages sued for, the court shall set off this amount from the amount

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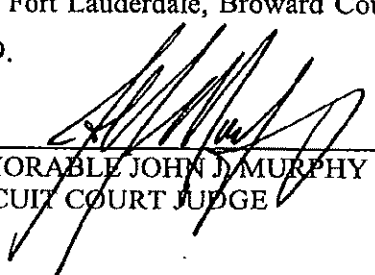
of any judgment to which the plaintiff would be otherwise entitled at the time of rendering judgment.”).

Second, the valuation authorities provided by Mayer Brown note that a valuation is performed at a particular point in time and is thus predicated on information that is known or foreseeable at the valuation date. In light of the foregoing, the Court determines that the appropriate valuation date is the date that the settlement assets was transferred to the Receiver. *See Acadia Partners, L.P. v. Tompkins*, 759 So. 2d 732, 739 (Fla. 5th DCA 2000)(applying the setoff credit as of the date assets transferred).

Here, the settlement transaction between the Receiver and Sun Capital closed on March 17, 2014. A review of the filings in connection with the federal court’s approval of the March 17, 2014 settlement reveals a lengthy due diligence process performed by the Receiver in determining the value of the transferred Promise Healthcare entities. Given the due diligence performed in connection with the settlement, the Court is not persuaded by the Receiver’s arguments in favor of applying retrojection to assess the value of the Promise Healthcare entities *post-closing* in light of said entities’ Chapter 11 reorganization in November 2018. The cases discussing the retrojection approach disfavor a post-valuation period that is too far attenuated. In this matter, the Promise Healthcare entities filed for bankruptcy **four years** after the settlement. The record does not support that the parties had a belief that *at the time of closing*, the Promise Healthcare entities were or would be subject to bankruptcy.

Accordingly, at this juncture, the Court ascertains that: (a) Mayer Brown is entitled to a setoff with an amount to be determined at a future date; (b) the value of the Receiver-Sun settlement shall be determined as of a date no later than March 17, 2014; and (c) no evidence relating to events occurring after the March 17, 2014 closing shall be admissible as it relates to the valuation and performance of the Promise Healthcare entities transferred in the Receiver-Sun settlement unless that evidence of value and performance relates contemporaneously with the March 17, 2014 closing.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on this 10 day of Dec, 2019.


HONORABLE JOHN J. MURPHY III
CIRCUIT COURT JUDGE