

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

SACHS CAPITAL FUND I, LLC, et al.

Plaintiffs and Counterdefendants,

v.

EM GROUP, LLC, et al.

Defendants and Counterclaimants.

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Case No. 480195-V
Judge Ronald B. Rubin

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ORDER

In an order dated May 22, 2020 (Dkt. No. 28), this Court ordered Defendants EM Group, LLC, EMSG, LLC, and Eli Kimel, and anyone acting with them in concert or on their behalf, to “upon receipt, deposit all proceeds of the sale of Empire Petroleum Partners LLC to GPM Investments LLC ... [and] any other distributions received from or in respect of Empire Petroleum Partners LLC ... into the Registry of the Clerk of the Circuit Court for Montgomery County, Maryland.” A consent preliminary injunction order dated June 1, 2020 (Dkt. No. 35) mandated the same. In October and November of 2020, pursuant to subsequent orders, \$21,316,411.87 was paid to TZG-Sachs Empire, LLC (both via the Court’s Registry and directly) to satisfy a loan and related costs.

In an order dated January 19, 2021, this Court accepted the Recommendation by the Hon. James R. Eyler (Ret.), Special Fiscal Agent for EMSG, LLC, Relating to Distribution of Proceeds Deposited and to be Deposited in the Court Registry (“Recommendation”), which had been filed with the Court on December 11, 2020 (Dkt. No. 134). The Order modified the Consent Preliminary Injunction Order (Dkt. No. 35) “such that money deposited into the Court’s Registry by EMSG, LLC shall be distributed pursuant to” the following sequence:

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Clerk of the Circuit Court
Montgomery County, Md.

1. Pay to Sachs Capital, LLC \$220,000.00 in satisfaction of its loan;
2. Set aside \$1,000,000.00 as a reserve for contingencies;
3. Pay Preferred Interest Payments to EMSG, LLC's Class A and Class B Preferred Members in the amounts of \$1,607,813.00 and \$5,297,400.00, respectively;
4. Return Outstanding Net Invested Capital to Class A and Class B Preferred Interests in the amounts of \$3,500,000.00 and \$24,300,000.00, respectively;
5. Pay Minimum Return Payments to Class B Preferred Member in the amount of \$15,341,326.00;

Since payments were made to TZG-Sachs Empire, LLC, an additional \$14,896,955.61 was paid into the Court's Registry. Pursuant to several orders of this Court (Dkt. Nos. 153, 158, 159), \$220,000.00 of that sum has been released to Sachs Capital, LLC to repay a loan, \$13,676,955.61 has been paid out to Sachs Capital Fund I, LLC (\$1,473,269.31), Sachs Capital-Empire, LLC (\$3,193,404.84), and Sachs Capital-Empire B, LLC (\$9,010,281.46), and \$1,000,000.00 has been kept in the Court's Registry as a reserve fund. The payments made pursuant to these orders satisfied the amounts due in Sections (1) and (3), above, and paid \$6,771,742.61 to the Class A and Class B Preferred Interests pursuant to Section (4).

To implement prior orders and finally adjudicate the claims and counterclaims of the parties hereto, and upon consideration of Plaintiffs' (Sachs Capital Fund I, LLC, Sachs Capital-Empire, LLC, Sachs Capital-Empire B, LLC, Sachs Capital, LLC, and Andrew Sachs) Motion for Summary Judgment and Request for Attorneys' Fees and Costs, and any opposition thereto, it is this Jrd day of March, 2021 hereby

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Clerk of the Circuit Court
Montgomery County, Md.

ORDERED that Plaintiffs' (Sachs Capital Fund I, LLC, Sachs Capital-Empire, LLC, Sachs Capital-Empire B, LLC, Sachs Capital, LLC, and Andrew Sachs) Motion for Summary Judgment and Request for Attorneys' Fees and Costs be and hereby is GRANTED; and it is further

ORDERED that judgment is entered for Plaintiffs as to Count I of their First Amended Complaint; ^{because} and it is further

~~DECLARED~~ that the sale of Empire Petroleum Partners, LLC to GPM Southeast, LLC and GPM Petroleum, LLC (collectively, "GPM") is an "EPP Liquidity Event" pursuant to the Third Amended and Restated Limited Liability Company Agreement of EMSG, LLC; and it is further

~~DECLARED~~ ^{ORDERED} that any distributions received by Empire Petroleum Holdings, LLC or EMSG from or in respect of Empire Petroleum Partners, LLC or any of its successor or affiliate entities (hereinafter "Empire") shall be distributed pursuant to the sequence set out above; and it is further

ORDERED that judgment is entered for Sachs Capital Fund I, LLC, Sachs Capital-Empire, LLC, and Sachs Capital-Empire B, LLC as to Counts II, III, IV, V, and VI of the First Amended Complaint; and it is further

ORDERED that EM Group, LLC, Eli Kimel, Barclay Booth, and Travis Booth (a) shall direct Empire that any further distributions from Empire intended for Empire Petroleum Holdings, LLC or EMSG shall be paid directly to Sachs Capital, LLC until all payments due to EMSG's Class A and Class B Preferred members (*i.e.*, Sachs Capital Fund I, LLC, Sachs Capital-Empire, LLC, and Sachs Capital-Empire B, LLC) that remain due pursuant to Sections 4 and 5 of the sequence listed above (\$36,369,583.39) are paid in full; (b) shall – in the event Empire fails to pay distributions intended for Empire Petroleum Holdings, LLC or EMSG directly to Sachs Capital, LLC – cause Empire Petroleum Holdings, LLC or EMSG to pay such distributions to Sachs

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Capital, LLC for distribution to the Sachs entities as set out in the sequence above, immediately upon their receipt from Empire; and (c) shall not take any actions to disrupt the distribution of proceeds from the sale of Empire contrary to the order of distribution set out in the sequence above or cause EMSG, LLC to hold distributions from Empire; and it is further

ORDERED, that to the extent there are not sufficient funds to pay all of what is due pursuant to Section 4 above, the funds shall be allocated proportionally between the Class A and Class B Preferred Members; and it is further

ORDERED that the \$1,000,000.00 held in reserve in the Court's Registry for contingencies shall be released and paid to Sachs Capital Fund I, LLC, Sachs Capital Empire, LLC, and Sachs Capital Empire B, LLC pursuant to the sequence above; and it is further

ORDERED that judgment is entered for Sachs Capital Fund I, LLC, Sachs Capital-Empire, LLC, Sachs Capital-Empire B, LLC, Sachs Capital, LLC, and Andrew Sachs as to Count VII of the First Amended Complaint; and it is further

ORDERED that Eli Kimel, EM Group, LLC, and Barclay Booth shall pay to Andrew Sachs, Sachs Capital, LLC, Sachs Capital Fund I, LLC, and Sachs Capital-Empire, LLC the costs and fees, including attorneys' fees, incurred in this lawsuit; or, in the alternative, it is further

ORDERED that Eli Kimel and EM Group, LLC shall pay to Plaintiffs the costs and fees, including attorneys' fees, Plaintiffs incurred in responding to and litigating the two sets of counterclaims filed by Eli Kimel and EM Group, LLC, as well as the First Amended Counterclaims of EM Group, LLC, as well as all related litigation, including litigation related to Defendants' Motion for Preliminary Injunction; and it is further

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ORDERED that Plaintiffs shall have 15 days from the ^{entry}~~date~~ of this Order to submit records of costs and fees, including attorneys' fees, and an assessment of the reasonableness of such costs and fees, including attorneys' fees.



Ronald B. Rubin, Judge

RONALD B. RUBIN
JUDGE

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Montgomery County, Md.