

FILED & ENTERED

APR 08 2015

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY zick DEPUTY CLERK

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

NORTHERN DIVISION

In re:

ESTATE FINANCIAL, INC.,

Debtor.

THOMAS P. JEREMIASSEN,
CHAPTER 11 TRUSTEE,

Plaintiff,

v.

BRIAN CAVE LLP, a professional limited
liability partnership, and KATHERINE
M. WINDLER, an individual,

Defendants.

In re

ESTATE FINANCIAL MORTGAGE
FUND, LLC,

Debtor.

Case. Nos. 9:08-bk-11457-PC
9:08-bk-11535-PC

Adversary Nos. 9:11-ap-01147-PC
9:11-ap-01146-PC

Chapter 11

ORDER ON MOTION OF BRYAN CAVE LLP TO COMPEL THE PRODUCTION OF DOCUMENTS

Date: March 12, 2015

Time: 10:00 a.m.

Place: United States Bankruptcy Court
Courtroom # 201
1415 State Street
Santa Barbara, CA 93101

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2 BRADLEY D. SHARP
CHAPTER 11 TRUSTEE,

3 Plaintiff,

4 v.

5 BRIAN CAVE, LLP, a professional limited
liability partnership, and KATHERINE
6 M. WINDLER, an individual,

7 Defendants.

8 Based on the memorandum of even date herewith, it is

9 ORDERED that Motion of Brian Cave LLP to Compel the Production of Documents
10 (“Motion”) is granted, in part and denied, in part; and it is further

11 ORDERED that, to the extent the Motion seeks a determination that Plaintiff, Thomas
12 Jeremiassen, the Chapter 11 Trustee for the bankruptcy estate of Estate Financial, Inc. (“EFI”
13 and the “EFI Trustee”) expressly waived any privilege with respect to the production of
14 documents involving EFI prior to the filing of the bankruptcy case, the Motion is denied; and it is
15 further

16 ORDERED that, to the extent the Motion seeks a determination that Plaintiffs, the EFI
17 Trustee and Bradley D. Sharp, the Chapter 11 Trustee for the bankruptcy estate of Estate
18 Financial Mortgage Fund, LLC (“EFMF” and the “EFMF Trustee”) impliedly waived the
19 attorney-client privilege with respect to pre-petition documents and communications between
20 EFI/EFMF and lawyers other than Defendant, Bryan Cave, LLP (“Bryan Cave”) by filing their
21 respective complaints in the above referenced adversary proceedings, the Motion is denied; and
22 it is further

23 ORDERED that, to the extent the Motion seeks a determination that the privilege asserted
24 by EFI and EFMF falls within the crime-fraud exception as to all pre-petition documents and
25 communications between EFI/EFMF and lawyers other than Bryan Cave, the Motion is denied;
26 and it is further

27 ORDERED that, to the extent the Motion seeks production of the documents identified
28 on the privilege logs produced by the EFI Trustee and the EFMF Trustee on January 14, 2015

1 and January 20, 2015, as having been disclosed to parties outside the attorney-client privilege
2 being asserted and therefore waived, the Motion is granted; and it is further

3 ORDERED that the EFI Trustee must make available for inspection and copying, all
4 remaining non-privileged pre-petition documents and communications responsive to Defendant
5 Bryan Cave LLP's First Set of Requests for Production of Documents, Electronically Stored
6 Information, and Tangible Things to Plaintiff, Thomas P. Jeremiassen, as Chapter 11 Trustee for
7 Estate Financial, Inc. (the "EFI Request"), in his possession or subject to his control not later
8 than June 12, 2015; and it is further

9 ORDERED that the EFI Trustee must provide a comprehensive privilege log identifying
10 each pre-petition document and communication responsive to the EFI Request in his possession
11 or subject to his control for which a privilege is asserted not later than June 12, 2015; and it is
12 further

13 ORDERED that the EFMF Trustee must make available for inspection and copying, all
14 remaining non-privileged pre-petition documents and communications responsive to Defendant
15 Bryan Cave LLP's First Set of Requests for Production of Documents, Electronically Stored
16 Information, and Tangible Things to Plaintiff, Bradley D. Sharp, as Chapter 11 Trustee for Estate
17 Financial Mortgage Fund, LLC (the "EFMF Request"), in his possession or subject to his control
18 not later than June 12, 2015; and it is further

19 ORDERED that the EFMF Trustee must provide a comprehensive privilege log
20 identifying each pre-petition document and communication responsive to the EFMF Request in
21 his possession or subject to his control for which a privilege is asserted not later than June 12,
22 2015; and it is further


23 ORDERED that, to the extent the Motion seeks a determination that the EFI Trustee
24 waived his right to assert a privilege in response to Bryan Cave's EFI Request solely due to the
25 delay in producing a privilege log, the Motion is denied; and it is further

26 ORDERED that, to the extent the Motion seeks a determination that the EFMF Trustee
27 waived his right to assert a privilege in response to Bryan Cave's EFMF Request solely due to
28 the delay in producing a privilege log, the Motion is denied; and it is further

1 ORDERED that, to the extent the Motion seeks (a) to compel the EFI Trustee or the
2 EFMF Trustee to produce post-petition documents and communications in response to the
3 Requests; (b) a deadline for the production of post-petition documents and communications in
4 response to the Requests; and (c) a deadline for the production of a privilege log with respect to
5 such post-petition documents and communications, the Motion is denied without prejudice.

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24 Date: April 8, 2015

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26 Peter H. Carroll
27 United States Bankruptcy Judge
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