

CAUSE NO. 2024-48085

ATLANTIC WAVE HOLDINGS, LLC
OF
and SECURE COMMUNITY, LLC,

Plaintiff/Judgment-Creditor

v.

CYBERLUX CORPORATION and
MARK D. SCHMIDT, Individually,

Defendant/Judgment Debtors.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

129TH JUDICIAL DISTRICT

**CYBERLUX CORPORATION AND MARK D. SCHMIDT'S REPLY IN
SUPPORT OF EMERGENCY MOTION TO STAY OR OTHERWISE SUSPEND
ORDER APPOINTING RECEIVER**

Cyberlux Corporation and Mark D. Schmidt's Emergency Motion to Stay and Emergency Motion to Correct the Order Appointing Receiver ("Turnover Order") should be granted. Court Appointed Receiver Robert Berleth's unfounded request for sanctions against counsel for Judgment Debtors (hereinafter, "Cyberlux") must be denied.

1. On June 10, 2025, Legalist SPV III, LP ("Legalist") transmitted payment of \$3,083,639.75 to the Receiver, via wire transfer.

The Receiver provided his wiring instructions for the first time shortly before 12 p.m. on June 9, 2025.¹ On June 10, 2025, Legalist's counsel transmitted a wire transfer of \$3,083,639.75 to the Receiver. This is the exact amount depicted by the Receiver's calculation, provided on June 9, 2025.² A partially redacted copy of the wire confirmation is attached as Exhibit A. This alone illustrates that Cyberlux's Motion to Stay should be granted.

¹ These had not been provided before, contrary to the Receiver's representations. And, as depicted below, the Receiver's wiring instructions are **not** on his law firm website.

² The Receiver's Judgment Calculation is attached as Exhibit B.

The payment of \$3,083,639.75 is an overpayment because no credits or offsets have been applied. Cyberlux has made numerous payments on the parties' underlying settlement agreement. Even Atlantic Wave, in its May 15, 2025 letter correspondence to the Court, acknowledged that credits and offsets should be applied. Despite being informed about his error, the Receiver continues to use the total judgment amount, and it appears the Receiver has taken no action to investigate what credits are appropriate. Although funds sufficient for the Receiver's fee have been paid, Cyberlux reserves the right to challenge the Receiver's fee, which must be determined by the Court after the Receiver submits documentation of his fees and expenses.

2. Berleth, along with every employee of Berleth & Associates, PLLC, received notice of the June 9 hearing.

The Receiver claims in his response that Cyberlux's counsel failed to provide notice of the June 9 hearing. This claim is factually incorrect.

In addition to principal Robert Berleth, Berleth & Associates, PLLC lists one additional attorney (Tristian Harris, Texas Bar No. 24134449) and three paralegals (Micah Jackson, Sheli Davis, and Corinne Martin) as employees. On Friday, June 6, 2025, upon filing of Cyberlux's Motion to Stay and filing of the Notice of the Court's June 9, 2025 hearing, Harris, Jackson, Davis, and Martin were notified of the filing of the Motion to Stay and the Notice of Hearing through the Court's electronic filing system.³

Immediately after filing, the undersigned e-mailed a courtesy copy of the Notice of Hearing, along with the Motion to Stay and Cyberlux's Motion to Correct, to Berleth.⁴ Counsel for Atlantic Wave was copied on that e-mail.

³ See EFileTexas.gov Notifications of Service, attached as Exhibits C-D.

⁴ See E-mail correspondence to R. Berleth and D. Walton, attached as Exhibit E.

Further, in a misreading of the Court's Turnover Order, Berleth seems to suggest that Cyberlux cannot seek protection from the Receivership order through motion practice. In doing so, Berleth claims that Cyberlux should be sanctioned simply for requesting relief from this Court.

Entertaining Berleth's unsupported request would effectively deny Cyberlux any meaningful due process. Moreover, the request directly contradicts Paragraph 21(h) of the Turnover Order, which permits Cyberlux to seek the Court's protection so long as Cyberlux attempts to resolve the issues and gives the Receiver notice of hearing.⁵ Cyberlux's counsel had telephonic conversations and exchanged written correspondence with the Receiver regarding these issues. Cyberlux also filed written objections with the Court, as required by the Turnover Order. These objections concerned, among other things, the scope of the Receiver's actions.

After these discussions and the filing of Cyberlux's objections, Cyberlux—with Legalist—tendered payment to the Receiver during a June 5, 2025 telephone conference. At the end of that call, the Receiver said he would provide wiring instructions for Cyberlux to make payment. He thereafter refused to accept payment.

The Receiver appears to seek sanctions for a mistaken statement the undersigned made during a hearing on October 28, 2024. The undersigned believes that mistake was corrected by counsel for Atlantic Wave during the very same hearing. In any event, the undersigned acknowledges that his understanding of the Virginia litigation was incorrect. The undersigned's quoted statements during the hearing were not made to deliberately

⁵ Paragraph 24 even allows Cyberlux to sue the Receiver.

mislead the Court or the parties. It was a mistake that was corrected by other counsel during the same hearing.

Nevertheless, the Receiver cannot obtain sanctions for activity that preceded his appointment. Indeed, he cites no authority for this concept. The statements could not have affected the Receiver's work in any way because he was not appointed until almost seven months after the fact. The Court should reject this effort to distract from the issues presented by the present motion.

In short, Cyberlux did everything it could short of asking this Court intervene to resolve these issues. Since Cyberlux complied with paragraph 21(h) of the Turnover Order, sanctions are not warranted.

3. Berleth falsely represented to the Court that his wiring instructions were sent to Cyberlux and that they were also available on his website.

In an attempt to refute the fact he refused to provide wiring instructions so that Cyberlux could satisfy the judgment, Berleth stated that he had not only provided his wiring instructions, but that they were posted on his website. Both claims are inaccurate.

The Court heard from the undersigned and counsel from Legalist that they had not been sent wiring instructions. Further, a cursory review of the "Wire Transfer Protocols" on Berleth & Associates, PLLC's website include:

To all:

For all settlement payments in excess of \$100,000, we REQUIRE electronic transfer by wire directly into or from our account, for both security and efficiency. Please ensure payment is addressed to BERLETH & ASSOCIATES, not the name of the client or case.

To wire to the IOLTA account use the following information:

Account Holder: BERLETH & ASSOCIATES

Frost Bank Account Number: (Contact Berleth & Associates)

Routing Number: (Contact Berleth & Associates)

Remarks: Cause number and debtor's name

Berleth & Associates requires all incoming or outgoing transfers to follow these Wire Transfer Protocol steps:

See <https://www.berlethlaw.com/wiring-protocol/>.

4. Berleth's response failed to address the merits of Cyberlux's Motion to Stay

Cyberlux's Motion to Stay laid out Berleth's recent acts, which very clearly exceed the authority of a post-judgment receiver appointed under section 31.002. First, Berleth is attempting to recover a \$25 million receivable payment from HII, upon which Cyberlux is awaiting payment. **This is more than \$20 million in excess of the judgment.**

Regarding the judgment amounts, on June 5, 2025, Berleth informed Cyberlux and Legalist that ~\$2.975 million was outstanding on the judgment. Berleth stated this despite being repeatedly informed by Cyberlux's counsel that he had completely failed to account for credits and offsets (i.e., prior payments made by Cyberlux to Judgment Creditors, pursuant to their settlement agreement). At the June 9, 2025 hearing, Berleth represented

to the Court that \$3.083 million was owed on the judgment. Berleth did not explain how the judgment amount increased over \$115k in 3 days (and over a weekend, no less). Additionally, Berleth's response does not dispute that he has undertaken efforts to sell Cyberlux's subsidiary, even after Cyberlux and Legalist tendered payment to him.

Instead of disputing the merits of the motion, Berleth's response entirely misses the mark by arguing that Cyberlux is still challenging enforcement of the judgment. That too is incorrect. Cyberlux's motion asserts that the Receiver is refusing payment of the judgment and greatly exceeding his authority.

The Receiver own representations demonstrate that he is exceeding his authority – at the June 9, 2025 hearing, the Receiver attested to the Court his efforts to contact various creditors that (1) are not parties to this action; and (2) are **not even judgment creditors in any jurisdiction**. If nothing else, the Receiver's admissions, standing alone, are grounds to grant Cyberlux's Motion to Stay.

5. The Court should not award Berleth any attorneys' fees, as Berleth's refusal to accept payment and attempts to exceed his authority necessitated the motions.

As described in Cyberlux's Motion to Stay, even after funds sufficient to satisfy the judgment were tendered to the Receiver, the Receiver refused payment. After the funds were tendered, Berleth continued his efforts to solicit bids for the sale of Cyberlux's subsidiary. Berleth also continued his efforts to "coordinate" with HII, i.e., to persuade HII to pay a \$25 million receivable to Berleth, rather than to Cyberlux. These sorts of tactics are improper. In fact, even while this matter was pending, the Fifth Circuit held that Berleth had exceeded his authority as Court-appointed receiver. *Matter of Preferred Ready-Mix, L.L.C.*, No. 24-20158, 2024 WL 5252498, at *1 (5th Cir. Dec. 31, 2024). Berleth lost that

appeal, which arose after the Southern District of Texas concluded that he had “effectively held the major assets of the debtor hostage.” If Berleth is willing to withhold tools and dump trucks (which he apparently did in *Preferred Ready-Mix*), there should be grave concerns that he will be tempted to withhold cash paid into his account.

CONCLUSION

Cyberlux asks that the Court stay or suspend enforcement of the Turnover Order until the Court may make necessary corrections to the Turnover Order, review and approve the Receiver’s compensation, and take other necessary actions to discharge the Receiver and enter a Satisfaction of Judgment. Cyberlux prays for all further relief to which it is entitled.

Respectfully submitted,

/s/ Alexander J. Pennetti

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*Attorneys for Defendants Cyberlux
Corporation and Mark D. Schmidt*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all counsel pursuant to the Texas Rules of Civil Procedure on June 11, 2025.

/s/ Alexander J. Pennetti

Alexander J. Pennetti

Unofficial Copy Office of Marilyn Burgess District Clerk

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Envelope ID: 101870179

Filing Code Description: Motion (No Fee)

Filing Description: Cyberlux and M. Schmidt's Reply in Support of Motion to Stay or Suspend Order Granting Receiver

Status as of 6/11/2025 8:31 AM CST

Associated Case Party: Robert Berleth

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