

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

| | | |
|---|---|-------------------------|
| In re: |) | |
| |) | Chapter 11 |
| SILVERGATE CAPITAL CORPORATION, <i>et al.</i> , |) | |
| |) | Case No. 24-12158 (KBO) |
| Debtors. ¹ |) | |
| |) | (Jointly Administered) |
| |) | |
| <hr/> |) | |
| SILVERGATE CAPITAL CORPORATION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | Adv. Case No. |
| STILWELL ACTIVIST |) | |
| INVESTMENTS, L.P., |) | |
| |) | |
| Defendant. |) | |
| <hr/> |) | |

**DECLARATION OF LINDSAY J. TIMLIN IN SUPPORT OF SILVERGATE CAPITAL
CORPORATION’S MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Lindsay J. Timlin, declare under penalty of perjury, as follows:

1. I am a member of the firm of Cravath, Swaine & Moore LLP, Two Manhattan West, 375 Ninth Avenue, New York, NY 10001, proposed counsel for the Debtors in the above-captioned cases. A motion for my admission to this Court *pro hac vice* is pending and I respectfully submit this declaration.

2. I submit this declaration in support of Silvergate Capital Corporation’s *Motion for Temporary Restraining Order*.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are as follows: Silvergate Capital Corporation (7337), Silvergate Liquidation Corporation (4449) and Spring Valley Lots, LLC (0474). The Debtors’ mailing address is 4225 Executive Square, Suite 600, La Jolla, CA 92037.

3. Attached hereto as **Exhibit A** is the May 23, 2024, Hearing Transcript.
4. Attached hereto as **Exhibit B** is the July 9, 2024, Stilwell Proxy Letter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 19, 2024
New York, New York

/s/ Lindsay J. Timlin

Lindsay J. Timlin

Exhibit A

STILWELL ACTIVIST * **IN THE**
INVESTMENTS, L.P * **CIRCUIT COURT**
Plaintiff * **FOR**
v. * **BALTIMORE COUNTY**
SILVERGATE CAPITAL *
CORPORATION *
Defendant * **Case No. C-03-CV-24-000621**

* * * * *

TRANSCRIPT OF PROCEEDINGS:

MOTION TO DISMISS

MAY 23, 2024

HONORABLE SHERRIE R. BAILEY, presiding

SARA ALPERT, Esquire

THOMAS FLEMING, Esquire

Counsel for Plaintiff

STEVEN HOLLMAN, Esquire

ABRAHAM SHANEDLING, Esquire

Counsel for Defendant

Karasha Tate, Transcriber

1 PLEASE NOTE: Unintelligible or inaudible may be found
2 throughout the transcript of this proceeding due to the audio not being able to be
3 picked up loudly or clearly on the microphones of the individual speaking and/or
4 the individual not speaking clearly or loud enough.

5
6
7
8 **--(ON THE RECORD AT 9:00 AM)--**
9

10 THE COURT: Good morning, officially for the record, this is Judge
11 Sherrie Bailey, the Baltimore County Circuit Court on Thursday, May 23rd, 2024.
12 We're here this morning in the matter of Stilwell Activist Investments LP vs
13 Silvergate Capital Corporation, C-03-CV-24-621. Good morning, Counsel for
14 the record.

15 MS. ALPERT: Good morning, Your Honor, Sara Alpert Lawson of
16 Zuckerman Spader in Baltimore for Petitioner Stilwell Activist Investments
17 Limited.

18 MR. FLEMING: And Your Honor, Thomas Fleming for Petitioner
19 as well and with me is our General Counsel, E.J. Borak.

20 THE COURT: Good morning.

21 MS. ALPERT: Good morning.

1 MR. HOLLMAN: Good morning, Your Honor, Steve Hollman of
2 the Shepard Mullin Firm on behalf of the Respondents, Silvergate Capital
3 Corporation, and I'm accompanied by my colleague, Abraham Shanedling, also of
4 the Shepard Mullin Firm.

5 THE COURT: Good morning, gentlemen. Folks, first question.
6 Why are you all here in person? You know, we do virtual hearings all the time.
7 You're always welcome, I'm here. But you know, so, anyone is always welcome
8 in the Courtroom. But for future reference for things like this, I and many of the
9 other Judges are quite comfortable with the technology and would be delighted to
10 handle matters like this via our virtual feature, our Zoom feature.

11 So, just offering.

12 MR. FLEMING: Well, Your Honor, I was...

13 THE COURT: I can't believe you all drove here and parked for this,
14 but, in any way...

15 MR. FLEMING: Your Honor, I tried to take Amtrak down last
16 night, so...

17 THE COURT: Oh my.

18 MR. FLEMING: I would appreciate it, I wish I had known.

19 THE COURT: Alright. No, please always feel free and I will
20 encourage my staff to overtly make the offers in Motions and argument matters
21 like this. Alright, but for next time, should there be a next time, please do know

1 that we in Baltimore County are quite comfortable with the technology we use it
2 all the time. We do - I've done hearings with folks in - in Europe, in Africa and,
3 you know, it works very well. You don't have to actually be here in person. But
4 thank you. I know not all of the Judges are of the same opinion, so, you might
5 want to inquire. But most of us are - are very comfortable with the technology.
6 Alright, tell me why I should or shouldn't grant this Motion to Dismiss I'm
7 listening folks.

8 MR. HOLLMAN: Thank you, Your Honor. You – you should grant
9 the Motion, may it please the Court. Petitioner agrees that the issuance of a Writ
10 of Mandamus is an extraordinary remedy reserved for compelling the
11 performance of a non-discretionary duty. They say that in their opposition at
12 page five.

13 But Petitioner goes on to acknowledge that the relevant bylaw
14 provision states that the annual meeting is to be held on the last Friday of April,
15 “Or at such other date and time as may be determined by the Board”. And that in
16 its words, “The Board may have discretion when to call a meeting”. That's the
17 last two lines of page six of their opposition. The bylaw provision thus commits
18 the decision of the timing of the meeting to the sound discretion of the Board
19 Mandamus is not available under such circumstances. Stilwell...

20 THE COURT: Yes, but there was no meeting in 2023.

21 MR. HOLLMAN: That's true, Your Honor...

1 THE COURT: That wasn't one.

2 MR. HOLLMAN: That - that is true, Your Honor. We acknowledge
3 the statutory and governance obligation to hold a meeting, and also acknowledge
4 the obligation to provide an annual financial statement. Which the Board
5 determined could not be done last year, an audited financial statement could not
6 be completed on account of the exigencies created by the implosion of the crypto
7 exchange. So...

8 THE COURT: I do realize these were sort of, shall we put it,
9 unprecedented, perhaps one could say unprecedented situation. But is there
10 anything in the bylaws or otherwise that gives the folks the option of not having a
11 meeting at all?

12 MR. HOLLMAN: No - no, Your Honor, any more than there is
13 discretion about circulating the annual statement of affairs, including the audited
14 financial statement. So, if you're - if you're on Board confronted with these
15 extraordinary exigent circumstances, you - you made the determination to wind
16 down operations and liquidate assets. You can't produce a clean financial
17 statement, an audited financial statement.

18 THE COURT: Separate issue, what's that got to do with whether
19 meeting or no meeting?

20 MR. HOLLMAN: Well, so the choices were all bad choices for the
21 Board. So, assume you're in that position. The Board, according to their March

1 8K filing with the SEC, states that they're - they're winding down. They're in the
2 process of delisting and liquidating assets, and they want to have an orderly wind
3 down. They subsequently acknowledge that they're not in a position to prepare
4 the financial statements or go forward with the meeting. And don't foresee being
5 able to do so during calendar year 2023. So, publicly acknowledge that - that
6 with these problems, it's going to be difficult. And it could impair value to do
7 something that they're required by the governance documents to do. They
8 acknowledge that.

9 And so, they indicate that they've hired Finanacial Advisors. This is
10 an exhibit 4 to our - to our Motion, which is their 8K filing and the press release
11 that accompanied it. And says we - we've engaged a Finanacial Advisor, engaged
12 an Advisor to help with the winding down, and engaged the Kravat Firm (sic) as
13 Legal Advisors, and they make the decision under those circumstances that of
14 their bad options, not preparing the financial statement because they can't, not
15 having the meeting, because they can't, is the best option available to them in
16 2023. So, that's 2023. No petition in 2023 to ask that a meeting occur in 2023.
17 And given the notice requirements of the bylaws...

18 THE COURT: And you all would have argued, but 2023 isn't over.

19 MR. HOLLMAN: Well, 2023 - having a meeting in...

20 THE COURT: It's over now but....

21 MR. HOLLMAN: 2023 impossible. So, now we're, and - and

1 when they pull up the petition, that they - they asked that a meeting be set 120
2 days after the Court's order granting the Mandamus Petition, which would have
3 put us at the earliest in mid-June. If there were truly an exigency to have a
4 meeting in 2023, they could have filed in 2023 after the last day for notice of a
5 meeting to occur in 2023. So, they had to have known by December 21st, the last
6 day of notice, because the notice provision had to be not less than 10 or more than
7 90 days before the meeting.

8 THE COURT: Let me hear from opposing Counsel.

9 MR. HOLLMAN: Yes, Your Honor.

10 MR. FLEMING: Morning, Your Honor. Thomas Fleming, thank
11 you for making me pro hoc (unintelligible).

12 THE COURT: Why are you all trying to make them have a
13 meeting?

14 MR. FLEMING: Pardon? I'm sorry, Your Honor.

15 THE COURT: I'm just curious. Why are you all trying to make
16 them have a meeting?

17 MR. FLEMING: We have a candidate that we have nominated for
18 election to the Board. So, it's a there's a five-seat Board of Directors. And we
19 said in the petition we intended to nominate one. There's a nomination window
20 under the bylaws which opened, and we made our nomination. So, we would like
21 to put forward a representative which we believe, you know, might get the votes

1 of the shareholders at a meeting. So, that's our reason for seeking the meeting.

2 The company...

3 THE COURT: I mean, what's the point at this juncture considering
4 the position the company is in?

5 MR. FLEMING: Well, the company still has some considerable
6 assets, Your Honor. There are 31 million shares outstanding. It trades at maybe a
7 quarter a share. What it's really worth, we don't know. But what's in liquidation
8 is the subsidiary. So, they own a bank, the bank is being liquidated, they paid off
9 depositors and so forth, but there's a corporate entity. This is the parent company
10 that still exists that has shareholders of which we are one. And obviously the
11 market believes there's some value. We would like to see if we can enhance that
12 value by getting a seat on the Board. And that's what we're really all about, Your
13 Honor.

14 I mean, the statute is clear, it's non-discretionary. There are very few
15 things in the Maryland Corporation Code that are non-discretionary. Having a
16 meeting annually is one of those few. It's not subject to the Business Judgment
17 Rule, nor do the bylaws here change that. The bylaws say the annual meeting
18 shall be held, and then it says the Board can set the time but that doesn't mean
19 they can set the time never. It doesn't mean they can eliminate the rest of the
20 bylaw by not having a meeting.

21 So, that's the essence of our claim. Yes, the Board does have

1 discretion. But the fact of calling a meeting is something about which they have
2 no discretion. They can set time and date. We've asked the Court to order it
3 within 120 days, which is ample time for the company to get its affairs in order.
4 You know, in order to do a meeting for a company like this, you have to give
5 notice to the SEC, get proxy materials reviewed, and so on. So, it can't be done
6 overnight. So, 120 days is ample time. That's what the statute requires, Your
7 Honor.

8 And that's really – that's why this is a Mandamus case, because it's
9 not a discretionary act to have a meeting. The fact that the banks have
10 liquidation, is not a reason not to have a meeting either. The absence of financial
11 information, if anything, may enhance some of the benefits of the meeting by
12 allowing shareholders to meet and confer with the Board.

13 THE COURT: Alright, anything else on the Motion to dismiss?

14 MR. HOLLMAN: Yes, Your Honor. It is a discretionary
15 determination on when to set the meeting, and at this point, we're not talking
16 about a meeting in 2023. We're talking about the 2024 meeting. So, it's the
17 Board's discretion when to set the 2024 meeting. It is the present intention of the
18 Board to hold a meeting towards the end of the year. And when towards the end
19 of the year it does so, is dependent on a range of factors involving...

20 THE COURT: All of that is well and good as to the Writ of
21 Mandamus, but why should I dismiss this?

1 MR. HOLLMAN: Because the predicate for ordering the Board to
2 have a meeting at a date certain that the Court directs, rather than that the Board
3 selects, based on its business judgment, is a decision committed to the sound
4 discretion of the Board. It is a classic business judgment decision, and Judge
5 Raker, and Judge Adkins, in their decisions that we cited in our papers, both
6 confirmed the applicability of the statutory Business Judgment Rule under
7 circumstances where the presumption of disinterestedness, independence, and
8 reasonable action applies, absent its rebuttal by a showing of specific facts that
9 suggests that the directors have acted fraudulently, dishonestly, or incompetently.
10 None of those factors have even been alleged here.

11 All that's being asserted is that if you allow them to exercise their
12 discretion, they may defer in order to maintain themselves in office. That hasn't
13 occurred yet. And it may never occur. It's certainly not the intention of the
14 current Board to try illegally to maintain itself in office, in the way that the most
15 significant case cited by the Petitioner involved. Which was five separate
16 amendments to the bylaws to keep deferring the date of the annual meeting. That
17 has not occurred here. So, without that factual predicate, there's simply no basis
18 for the relief that they're requesting, and therefore the petition is due to be
19 dismissed. Thank you, Your Honor.

20 MR. FLEMING: Your Honor, may faint - be heard briefly?

21 THE COURT: Yes.

1 MR. FLEMING: The net effect of not having a meeting is that the
2 five directors who were elected for specific terms continue, so, that's the net
3 effect. As for this 2023 versus 2024, I mean, the statute is clear you have to have
4 a meeting. We're not asking the Court to decree what year this is for, but we're
5 asking the Court to order a meeting because they haven't had one.

6 THE COURT: You're asking me to rule on the Writ of Mandamus
7 today?

8 MR. FLEMING: Yes, Your Honor.

9 THE COURT: I was going to say what's before the Court is simply
10 the Motion to dismiss.

11 MR. FLEMING: Well, Your Honor, you raise an interesting
12 procedural question, and the Maryland Code is not where I usually practice. But
13 if you read the statute, Your Honor, it says under 15-701C, that the response can
14 be either a Motion to dismiss or an answer, 322 versus 323. It doesn't say you get
15 one and then the other. And the Motion to dismiss obviously is to raise the legal
16 issues that they brought here before you today. And having done that, I believe
17 that the petition for Writ of Mandamus has been answered and that it's
18 appropriate for the Court to issue an order at this point.

19 And this is especially an appropriate case for that because I
20 explained, Your Honor, that it takes maybe 90 to 120 days just to organize a
21 meeting with the public involvement. So, if there's an answer and then we come

1 back for another hearing in July, August, September, we may not have a meeting
2 at all in 2024. So, this Motion to dismiss has delayed the progress of this we filed
3 in February. They were entitled to make the Motion. The Court has a calendar,
4 which we'll have to work with, and that's why we're here today, but to allow them
5 to then answer would just prolong this. We might not have a meeting until 2025,
6 even with a Court order.

7 So, I think the way the Mandamus Statute is written, it's intended to
8 give the Respondent the chance to argue on the facts through an answer or on the
9 law, and the statute says you can raise the affirmative defenses. So, if they have
10 legal theories, they can raise them. But there aren't really any issues of fact here.
11 I mean, our - the statute says you have to have a meeting annually, they didn't
12 have one, there is none scheduled, but this distinction between 2023 and 2024 just
13 makes no sense. It's a perpetual catch-22 at the end of this year, they could say
14 we're scheduling for 2025, leave us alone, which just isn't the law. So, Your
15 Honor, we would ask for a ruling now directing a meeting within 120 days.

16 THE COURT: Alright.

17 MR. HOLLMAN: Your Honor, if I may. It would be a different
18 factual predicate if we come to the end of the year and there still hasn't been a
19 meeting. We acknowledge the obligation to conduct the meeting, and it's the
20 present intention, subject to circumstances like insolvency or growing concern
21 that may affect their ability to hold the meeting, to conduct the meeting towards

1 the end of the year. If it comes and goes without a meeting, then they have a
2 different factual predicate. Then they can argue that that's a pattern of behavior
3 that's sufficient.

4 THE COURT: Isn't that exactly what happened?

5 MR. HOLLMAN: No, no, it's only been one time. Not - not the five
6 times of the Primrose case.

7 THE COURT: How many times does it take?

8 MR. HOLLMAN: Well, in Primrose, it took five.

9 THE COURT: Why does it have to take five or four?

10 MR. HOLLMAN: Well, the circumstances...

11 THE COURT: Is there something in the case law that indicates a
12 specific number or time?

13 MR. HOLLMAN: No, but there is something in the case law that
14 says it's their burden to overcome the presumption of the applicability of the
15 Business Judgment Rule by alleging specific facts. And the only facts they've
16 alleged now, are that it may be the case, that Directors want to perpetuate
17 themselves in office indefinitely. And there are no facts upon which you could
18 make that determination based on what's been pleaded. Thank you, Your Honor.

19 THE COURT: Anything else?

20 MR. FLEMING: I would just say, Your Honor, just on the Business
21 Judgment Rule, we've specifically alleged that the Board has acted outside its

1 authority and in defiance of the code by not having a meeting. And that's - the
2 Business Judgment Rule doesn't give them the power, doesn't give the Board the
3 power to rewrite the corporation's code.

4 THE COURT: Anything else?

5 MR. HOLLMAN: Just that they specifically have not alleged that
6 the Board Members acted with an evil state of mind or with the intention of
7 violating a statute nor could they.

8 THE COURT: Alright. Anyone else?

9 MR. FLEMING: No, Your Honor, I'm through.

10 THE COURT: Going once, going twice.

11 MR. HOLLMAN: Thank you, Your Honor.

12 THE COURT: Alright, most respectfully to all parties, it seems
13 abundantly clear to the Court the Motion to dismiss is most respectfully denied.
14 The request for Mandamus is granted as requested. And you all can take it from
15 there, I'm sure, alright. Who will submit the proposed order?

16 MR. HOLLMAN: Your Honor, we'll submit a proposed order.

17 THE COURT: Very well. When may I expect that? Next week,
18 Monday?

19 MS. ALPERT: Well, we already have a proposed order that
20 accompanies a petition.

21 THE COURT: Is there proposed order in the file?

1 MR. FLEMING: I think we would change it, Your Honor, because
2 there was some – there was an item or two in there. Can we submit it on
3 Wednesday?

4 THE COURT: Sure.

5 MR. FLEMING: The 29th?

6 THE COURT: That's fine.

7 MR. FLEMING: Thank you.

8 THE COURT: Just don't make my Clerk come track you down.
9 Alright? Next week is fine.

10 MR. FLEMING: Thank you.

11 THE COURT: Thank you, folks. Court stands in recess.

12 MS. ALPERT: Thank you.

13 THE COURT: Safe travels.

14 MS. ALPERT: Thank you.

15 MR. FLEMING: It was quite a trip, Your Honor, on Amtrak last
16 night.

17

18 **--(OFF THE RECORD AT 9:19 AM)--**

19

1 CERTIFICATE OF TRANSCRIBER

2 I hereby certify that the hearing in the matter of Stilwell Activists
3 Investments, L.P. vs Silvergate Capital Corporation, case number C-03-CV-24-
4 000621, heard in the Circuit Court for Baltimore County, was recorded by means
5 of audio recording equipment.

6 I further certify that, to the best of my knowledge and belief, page numbers
7 1 through 16 constitute a complete and accurate transcript of the proceedings as
8 transcribed by me.

9 I further certify that I am neither a relative to, nor an employee of, any
10 attorney or party herein, and that I have no interest in the outcome of this case.

11 In witness thereof, I have affixed my signature this 13 day of June 2024.

12
13
14
15
16 *Karasha Tate*

17 Karasha Tate, Transcriber

Exhibit B

STILWELL ACTIVIST INVESTMENTS, L.P.

111 BROADWAY • 12TH FLOOR
NEW YORK, NY 10006
(787) 985-2194
INFO@STILWELLGROUP.COM

July 9, 2024

Dear Fellow SICP Owner,

*Karen F. Brassfield • Paul D. Colucci • Thomas C. Dircks
Michael T. Lempres • Scott A. Reed*

These are our Company's five directors¹ who remain from the days when SICP's common stock traded in the triple digits. Now, as you know, the stock trades below a dollar. We intend to run for one board seat at the Company's annual meeting² with the goal of recovering as much value as possible for SICP's common shareholders.

We believe we are the Company's largest shareholder with 9.9% ownership of SICP common stock.³ We're not sure just what assets remain at the Company because SICP won't provide us with any meaningful financials.⁴ We're hopeful that enough remains to partially rebuild common shareholder value at SICP.

We intend to distribute proxy materials for this year's annual meeting so you can vote FOR our nominee, Joseph D. Stilwell, and NOT FOR the current SICP directors. If elected to the SICP board, our nominee will work to recover the greatest value possible for the common shareholders.

Sincerely,



Megan Parisi
(787) 985-2194
mparisi@stilwellgroup.com

¹ According to SICP's website.

² Per a Maryland court order secured by our efforts, SICP is now being forced to hold its required annual meeting of stockholders that it failed to hold last year.

³ Based on the outstanding share count last reported by SICP in its filings with the Securities and Exchange Commission.

⁴ We have sued in California for these documents that SICP refuses to make available and will wait for a ruling in that case.