
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff(s)

Case No: 09-cv-3332 MJD/JJK

v.

TREVOR COOK d/b/a CROWN
FOREX, LLC, PATRICK KILEY d/b/a
CROWN FOREX, LLC, UNIVERSAL
BROKERAGE FX and UNIVERSAL
BROKERAGE FX DIVERSIFIED, OXFORD
GLOBAL PARTNERS, LLC, OXFORD
GLOBAL ADVISORS, LLC, UNIVERAL
BROKERAGE FX ADVISORS, LLC f/k/a
UBS DIVERSIFIED FX ADVISORS, LLC,
UNIVERSAL BROKERAGE FX
GROWTH, L.P. f/k/a UBS DIVERSIFIED FX
GROWTH L.P., UNIVERSAL BROKERAGE
FX MANAGEMENT, LLC f/k/a UBS
DIVERSIFIED FX MANAGEMENT, LLC
and UBS DIVERSIFIED GROWTH, LLC,

Defendant(s)

R.J. ZAYED,

Receiver.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Case No: 09-cv-3333 MJD/JJK

Plaintiff(s)

v.

TREVOR G. COOK,
PATRICK J. KILEY,
UBS DIVERSIFIED GROWTH, LLC,
UNIVERSAL BROKERAGE FX
MANAGEMENT, LLC,
OXFORD GLOBAL ADVISORS, LLC,
and OXFORD GLOBAL PARTNERS, LLC,

Defendants

and

BASEL GROUP, LLC,
CROWN FOREX, LLC,
MARKET SHOT, LLC,
PFG COIN AND BULLION,
OXFORD DEVELOPERS, S.A.,
OXFORD FX GROWTH, L.P.,
OXFORD GLOBAL MANAGED
FUTURES FUND, L.P., UBS DIVERSIFIED
FX ADVISORS, LLC, UBS DIVERSIFIED
FX GROWTH, L.P., UBS DIVERSIFIED
FX MANAGEMENT, LLC, CLIFFORD
BERG, and ELLEN BERG,

Relief Defendants.

R.J. ZAYED,

Receiver.

**MEMORANDUM IN SUPPORT OF RECEIVER'S MOTION FOR
ORDER ALLOWING SUMMARY PROCEEDINGS**

In order to fulfill his duty to maximize distributions to defrauded investors, the Receiver, R.J. Zayed, plans to initiate litigation to recover investor assets transferred to various third parties. The Receiver requests an Order allowing him to commence summary proceedings before this Court to seek judgments against these third parties, compel discovery, enforce judgments, and obtain such other relief as is necessary and appropriate for the Receiver to fulfill his duties.

Summary proceedings are appropriate because they will best serve the interests of judicial economy, preservation of receivership assets, and consistent treatment of the various third parties without compromising the third parties' due process rights.

BACKGROUND

The SEC and CFTC Complaints in this action allege that, beginning at least in July 2006, Defendant Trevor Cook ("Cook") operated a Ponzi scheme, defrauding over 1000 investors by selling investments in a purported foreign currency trading program and then using the money for non-investment purposes, including for personal expenses. *See Complaint*, SEC Docket No. 1 (Nov. 23, 2009); *Complaint for Injunctive and Other Equitable Relief and for Penalties Under the Commodity Exchange Act*, CFTC Docket No. 1 (Nov. 23, 2009).

The Receiver was appointed on November 23, 2009 to marshal, preserve, account for, and liquidate the assets of the Receivership. *See Order Appointing Receiver*, SEC Docket No. 13 (Nov. 23, 2009); *see also Amended Order*

Appointing Receiver, SEC Docket No. 18 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, SEC Docket No. 68 (Dec. 11, 2009); *Order Imposing Asset Freeze and Other Ancillary Relief*, SEC Docket No. 14 (Nov. 23, 2009); *Order Identifying Frozen Accounts*, SEC Docket No. 15 (Nov. 23, 2009); *Ex Parte Statutory Restraining Order*, CFTC Docket No. 21 (Nov. 23, 2009); *Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96 (Dec. 11, 2009).

On January 25, 2010 the Court issued an Order finding Cook in contempt of the Court's Asset Freeze Orders. *Memorandum Opinion and Order*, SEC Docket No. 167 (Jan. 25, 2010). The contempt order also included findings of fact—based on evidence presented at evidentiary hearings on January 8 and 12, 2010—establishing that from at least July 2006 through October 2009, investor assets were deposited in Cook's personal bank account. *Id.* at 9. The contempt order also found that Cook used those investor assets to, among other things, purchase vehicles and other personal property, pay the personal debts of himself and others, and purchase real estate. *Id.*

On April 28, 2010 the Court entered an Order establishing that the Receivership holds an interest of \$316,354.24 in a residence shared by Cook and his wife Gina Cook. *Amended Order*, SEC Docket No. 285 (April 28, 2010). The Order further established that funds from the Receivership Estates paid 53 out of the 54 mortgage payments made on the residence—payments that Cook made out of his personal bank account, beginning in August 2005. *Id.*; *see also Exhibit 4 to*

the Receiver's Motion for Order to Show Cause Against Gina Cook, SEC Docket No. 263-4 (April 26, 2010).

On March 30, 2010 the United States charged Cook with one count of mail fraud (18 U.S.C. § 1341) and one count of tax evasion (26 U.S.C. § 7201) in connection with his role in the Ponzi scheme. *United States v. Trevor Gilson Cook*, No. 10-cr-00075, Docket No. 1 (March 30, 2010) (attached hereto as Exhibit A). On April 13, 2010 Cook pleaded guilty to both counts. *United States v. Trevor Gilson Cook*, No. 10-cr-00075, Docket No. 7 (April 13, 2010) (attached hereto as Exhibit B). In his plea agreement and at the change of plea hearing, Cook admitted under oath that beginning by at least January 2007 he, aided and abetted by others, knowingly and intentionally created, devised, executed, and attempted to execute a scheme and artifice to defraud, and to obtain money and other things of value, by means of materially false and misleading statements and representations. *Id.* at 1-2. Cook also admitted under oath that he diverted investor funds to, among other things, make payments of interest and principal to other investors, pay personal expenses, purchase real estate, and purchase ownership interests in trading firms *Id.* at 3.

The findings discussed above establish that beginning at least by August 2005, Cook used investor funds for non-investment purposes, including for personal expenses, purchasing real estate, purchasing vehicles and other personal property, paying the personal debts of himself and others, paying purported

employees and consultants, paying mortgages and paying other investors in the scheme.

In the course of his efforts to locate and recover investor assets, the Receiver has identified various transfers of investor assets that Cook made to third party individuals and entities pursuant to his Ponzi scheme. The Receiver seeks an Order allowing him to commence summary proceedings for the purpose of recovering these assets.

ARGUMENT

Summary proceedings in both the SEC and CFTC cases to recover investor assets transferred by Cook to third parties will ensure consistent treatment of the various groups of third parties, promote judicial efficiency, and decrease litigation costs for the Receivership.

Summary proceedings against third parties who received investors' assets from Cook will raise the same issues—each third party received investor assets from Cook or one of the Receivership entities and the same laws of fraudulent conveyance and unjust enrichment will form the basis for the Receiver's claims to claw those assets back for investors. In addition, because it is intimately familiar with the facts of Cook's Ponzi scheme, this Court will be able to avoid any potentially inconsistent results. Finally, a "summary proceeding reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets." *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992).

Because of the need to reach consistent results, promote judicial economy and reduce litigation expenses to the Receivership, courts in this district and others have empowered receivers to use summary proceedings in similar situations. For example, a summary proceeding was used in this district in *SEC v. Brown*, 643 F. Supp. 2d 1077, 1079 (D. Minn. 2009) for fraudulent transfer and unjust enrichment claims against a mortgage company which had received transfers from a Ponzi scheme operator. *See also, e.g., FTC v. Assail, Inc.*, 410 F.3d 256, 267–68 (5th Cir. 2005) (holding that where receiver and nonparty claim the same property, due process is satisfied by a summary proceeding as long as there is adequate notice and opportunity to be heard); *SEC v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 657, 668–69 (6th Cir. 2001) (discussing broad powers and wide discretion of court in an equity receivership proceeding and holding that summary proceeding was appropriate for evaluating propriety of transfer to receiver because parties had the opportunity to be heard); *SEC v. Am. Capital Investments*, 98 F.3d 1133, 1146–47 (9th Cir. 1996); *Elliot*, 953 F.2d at 1566.

To ensure that the third parties have a full and fair opportunity to present their claims and defenses, *see Elliot*, 953 F.2d at 1567, upon initiation of summary proceedings, the Receiver will request a Scheduling Order that provides time for limited discovery on the facts underlying any defenses that the third parties might have and a fair and full opportunity for the third parties to present such defenses to

the Court.¹ In initiating a summary proceeding, the Receiver will serve the third party with a summary proceeding application similar to a complaint pursuant to Rule 4 of the Federal Rules of Civil Procedure. Thus, the third party will have the same procedural protections that would be available in a plenary proceeding. *See id.* ("[A] district court does not generally abuse its discretion if its summary procedures permit parties to present evidence when the facts are in dispute and to make arguments regarding those facts.").

Although there are some cases finding summary proceedings inappropriate, those cases are inapt and are easily distinguished from this case. In one, the Ninth Circuit found that the district court erred by entering a disgorgement order pursuant to an ancillary summary proceeding brought by a receiver because the receiver failed to serve the transfer recipient and "fought to deprive [the transfer recipient] of any opportunity to participate as a party." *SEC v. Ross*, 504 F.3d 1130, 1141 (9th Cir. 2007). Moreover, the court found summary proceedings inappropriate because the receiver's claim "ultimately turn[ed] on [the transfer recipient's] own violations of the securities laws." *Id.* at 1142. Other decisions simply hold that summary proceedings, as applied, failed to provide the transfer recipient with sufficient process. *See, e.g., SEC v. AmeriFirst Funding, Inc., et al.*,

¹ The Court should not allow discovery as to the source of the transferred assets; Cook's guilty plea and the underlying SEC and CFTC actions have established that the transfers from Cook or any of the Receivership entities consisted of proceeds from his Ponzi scheme. Rather, discovery should be limited to the amounts of the transfers, if the amounts are in dispute, and facts pertaining to any statutory or common law defenses that the third party may raise.

No. 3:07-cv-1188-D, 2008 U.S. Dist. LEXIS 7510, at *44-48 (N.D. Tex. Feb. 1, 2008) (noting that circuit court decisions “lend support to the use of summary proceedings in a receivership to adjudicate a [UFTA] claim,” but finding summary proceedings inappropriate as applied in this case because (1) the Receiver gave the defendant “little more than one week to prepare a defense” and (2) the Receiver attempted to adjudicate his UFTA claim in the context of a contempt hearing). In contrast, this Receiver's proposed actions do not allege any wrongdoing on the part of the transfer recipients, and the parties will have both notice and an opportunity to prove any affirmative defenses available to them.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court enter the Proposed Order Allowing Summary Proceedings filed herewith.

Dated: July 9, 2010

s/R. J. Zayed
R.J. Zayed (MN Bar No. 309,849)
Carlson, Caspers, Vandeburgh &
Lindquist, P.A.
225 South Sixth Street, Suite 3200
Minneapolis, MN 55402
Telephone: (612) 436-9600
Facsimile: (612) 436-9605
Email: rzayed@ccvl.com