

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

R.J. ZAYED, IN HIS CAPACITY AS
COURT- APPOINTED RECEIVER FOR
TREVOR G. COOK, ET AL.,
Petitioner,

Case No. 11-CV-01042 SRN/FLN

vs.

DAVID BUYSSE, STEVEN AND
PAMELA CHENEY, WALTER DEFIEL,
JOHN DZIK, TERRY FRAHM,
STEVEN AND JENENE FREDELL,
WILLIAM HARRIS, MICHAEL HEISE,
MICHAEL AND CYNTHIA HILLESHEIM,
LARRY HOPFENSPIRGER, STEVEN
KAUTZMAN, JAMES MCINTOSH,
GEORGE AND KAREN MORISSET,
AND REYNOLD SUNDSTROM, AND
DOT ANDERSON,

Respondents.

**MEMORANDUM OF LAW IN SUPPORT OF LENDER
RESPONDENTS' MOTION FOR LEAVE TO DEPOSE TREVOR COOK**

Lender Respondents Steven and Pamela Cheney, David Buysse, Walter Defiel,
Steven and Jenene Fredell, Michael and Jennifer Heise, Michael and Cynthia Hillesheim,
Larry Hopfenspirger, Steven Kautzman, James McIntosh, George and Karen Morisset,
Terry Frahm, and Reynold and Judith Sundstrom (hereinafter collectively "Lender

Respondents”), submit the following Memorandum of Law in Support of their Motion for Leave to Depose Trevor Cook.

FACTUAL BACKGROUND

The Court is no doubt familiar with the background facts in this litigation. Until recently, this proceeding was conducted as a summary proceeding in two cases, CFTC v. Cook, et al., and SEC v. Cook, et al. A number of entities owned or controlled by Trevor Cook pursuant to Cook’s admission, were operated as “Ponzi schemes.” Each of the Lender Respondents loaned money to various Cook entities, pursuant to promissory notes in various amounts totaling approximately \$5,000,000 at an interest rate ranging from ten percent (10%) to twelve percent (12%). Each of the Lender Respondents received the principal balance due on their promissory notes.

The United States Security and Exchange Commission (the “SEC”) and the United States Commodity Futures Trading Commission (the “CFTC”) filed a Complaint against Trevor Cook (“Cook”) on November 23, 2009, alleging that Cook had operated a Ponzi scheme, and in furtherance thereof, had defrauded over 1000 investors. *See Complaint* [Document No. 1 in Case No. 09-3333]; *Complaint for Injunctive and Other Equitable Relief and for Penalties Under the Commodity Exchange Act* [Document No. 1 in Case No. 09-3332]. R.J. Zayed was appointed Receiver on November 23rd, 2009. *See Order Appointing Receiver* [Document No. 13 in Case No. 09-3333]; *see also Amended Order Appointing Receiver* [Document No. 18 in Case No. 09-3333]; *Second Amended Order Appointing Receiver* [Document No. 68 in Case No. 09-3332]; *Order Continuing Appointment of Temporary Receiver* [Document No. 96 in Case No. 09-3332].

On April 13, 2010, Trevor Cook pled guilty to one count of mail fraud and one count of tax evasion in connection with the alleged Ponzi scheme. *United States v. Trevor Gilson Cook*, No. 10-cr-00075, Docket No. 7 (April 13, 2010) (attached as Exhibit B to Receiver's Motion for Summary Proceedings). The Lender Respondents dealt with either Trevor Cook or his employee Clifford Berg in making their loans and in receiving the return of their funds. The Receiver has informed counsel for Lender Respondents that he will not oppose the instant Motion.

LEGAL ARGUMENT

A. The Court Should Grant Leave to Respondents to Depose Trevor Cook.

Rule 30(a)(2) of the Federal Rules of Civil Procedure provides, in relevant part, "A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2)... if the deponent is confined in prison." Rule 26(b)(2) provides that the court must limit discovery if it determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues."

The Court must freely grant leave to Lender Respondents to depose Trevor Cook, as his testimony is absolutely necessary, is not duplicative and is not obtainable by any other means. Further, the Receiver has informed Lender Respondents that he does not object to the deposition of Trevor Cook.

1. Trevor Cook's Testimony is Essential.

Trevor Cook's testimony is absolutely essential to the Lender Respondents' defenses, as he will be able to testify regarding representations made specifically to individual Lender Respondents regarding the terms of their loans, as well as the representations to individual Lender Respondents before they received the return of their funds. Clifford Berg could also testify as to some of these matters, but Mr. Berg is expected to assert his Fifth Amendment privileges, as he has done in the past. As Trevor Cook has already been convicted, he will be able to fully testify regarding interactions between Lender Respondents and himself and his employees. This testimony is neither cumulative nor duplicative, and cannot be obtained from any other source, especially given Mr. Berg's refusal to testify.

2. A Deposition of Trevor Cook Will Not Be Unduly Burdensome.

Allowing the deposition of Trevor Cook will not involve any undue burdens to the parties in this above-captioned litigation. The Receiver has informed Lender Respondents that he will not oppose this Motion. In addition, the importance of Mr. Cook's testimony in this case cannot be understated. The defense of good faith depends in large part on the representations made by the Ponzi scheme operator. Trevor Cook's testimony regarding his representations to Lender Respondents, among others, is essential to resolution of this case.

CONCLUSION

Based upon the foregoing, Lender Respondents' Motion for Leave to Depose Trevor Cook should be granted.

Dated: May 27, 2011.

MOHRMAN & KAARDAL, P.A.

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