

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

Case No. 09-cv-3332 (MJD/FLN)

v.

TREVOR COOK et al.,

Defendants,

R.J. ZAYED,

Receiver.

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

Case No. 09-cv-3333 (MJD/FLN)

v.

TREVOR G. COOK et al.,

Defendants,

R.J. ZAYED,

Receiver.

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

Case No. 11-CV-574 (MJD/FLN)

v.

JASON BO-ALAN BECKMAN, et al.,

Defendants,

R.J. ZAYED,

Receiver.

**MEMORANDUM IN SUPPORT OF RECEIVER'S MOTION FOR SUMMARY
JUDGMENT FOR RETURN OF ASSETS FROM DENNIS GORMAN AND
PATRICIA EDENBORG-GORMAN**

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INTRODUCTION

This case stems from the second largest Ponzi scheme in Minnesota history. The masterminds of this fraud, Trevor Cook, Jason Bo-Alan Beckman, Patrick Kiley, Gerald Durand and Christopher Pettengill (“Ponzi Felons”), stole over \$160 million from more than 700 investors in a foreign currency program that was entirely fake. Dennis Gorman and Patricia Edenborg-Gorman (collectively, the “Gormans”) are Hollie Beckman’s aunt and uncle. During the course of the Ponzi scheme Hollie and her husband Jason Beckman (“the Beckmans”) gave the Gormans at least \$153,071.20 in Receivership assets. In this motion, the Receiver seeks summary judgment that the Gormans must return at least \$139,871.20 of the Receivership assets that were given to them by the Beckmans.

The majority of the money at issue in this motion was used to purchase a winter home in Texas (“the Kennedy Street Home”) for the Gormans. Because it was fully funded by Receivership assets, the Kennedy Street Home is a Receivership asset. As such, the funds used to purchase it, or the home itself, must be returned to the Receiver. The remaining \$21,500.00 sought in this motion was an interest-free loan that the Beckmans gave to the Gormans. This loan is also an asset of the Receivership and must be repaid. The Gormans have enjoyed the benefit of the Kennedy Street Home and an interest-free loan for more than seven years, while the people from whom this money was stolen have been left with pennies on the dollar. As such, the Receiver respectfully requests that the Court order the Gormans to return at least \$139,871.20 of the

Receivership assets they received from the Beckmans so this money can be returned to the victims of this Ponzi Scheme.

I. FACTS

A. Procedural History

In conjunction with the civil cases brought by the SEC and CFTC against the Ponzi Felons, this Court entered Asset Freeze Orders that froze all assets of the Ponzi Scheme, including all “funds, accounts, and other assets to which Defendants’ offering can be traced or which were acquired with the proceeds of the Defendants’ offering.” (Order Imposing Asset Freeze and Other Ancillary Relief at 5, *SEC v. Beckman et al.*, No. 11-0574 (D. Minn. Mar. 7, 2011), ECF No. 9 (“Beckman Asset Freeze Order”); Order on Mot. and Order of Prelim. Inj., Asset Freeze, and Other Ancillary Relief at 5, *SEC v. Cook et al.*, No. 09-3333 (D. Minn. Dec. 8, 2009), ECF No. 51; *see also* Ex Parte Statutory Restraining Order, *CFTC v. Cook et al.*, No. 09-3332 (D. Minn. Nov. 23, 2009), ECF No. 21-1 (ordering return to the Receiver of “all funds and other assets[] belonging to customers or commodity pool participants as described in the complaint.”).)

The Court also appointed a Receiver, R.J. Zayed, over the estates of the Ponzi Scheme, including the estates of Beckman, The Oxford Private Client Group, LLC, and all funds, accounts, and other assets held by or for the benefit of Relief-Defendant Hollie Beckman that were received, directly or indirectly, from Beckman and/or The Oxford

Private Client Group, LLC.¹ (Order Appointing Receiver at 1-2, *SEC v. Beckman et al.*, No. 11-0574 (D. Minn. Mar. 8, 2011), ECF No. 10 (“Beckman Receivership Order”); *see also* Second Amended Order Appointing Receiver at 1-2, *SEC v. Cook et al.*, No. 09-cv-3333 (D. Minn. Dec. 11, 2009), ECF No. 68; Order Continuing Appointment of the Temporary Receiver at 1-3, *CFTC v. Cook et al.*, 09-cv-3332 (D. Minn. Dec. 11, 2009), ECF No. 96.)

This Court has found that “[a]ll assets transferred from or by any Receivership entity . . . through November 2009, were transferred pursuant to the Ponzi scheme” and ordered the Receiver to recover and return stolen assets to defrauded investors. (Order Allowing Summ. Proceedings at 3, *SEC v. Cook et al.*, No. 09-3333 (D. Minn. July 20, 2010), ECF No. 380.) The Court has furthered ordered that “[a]ll persons . . . are ordered to turn over to the Receiver any and all property of any nature . . . and any other assets of any kind which any of the Receiver Estates are the owners of or have an interest in immediately upon receiving notice of the entry of this order.” (Beckman Receivership Order at §IX; *see also Id.* at §XII.)

B. The Beckmans Transferred \$153,071.20 of Receivership Assets to the Gormans

From September 18, 2008 to April 25, 2009, while the Ponzi Scheme was in full swing, the Beckmans made a series of seven transfers of Receivership assets to and for

¹ On May 4, 2015, the Court granted the SEC’s motion to dismiss Hollie Beckman and Clifford and Ellen Burg from the case. (*SEC v. Beckman et al.*, No. 11-0574 (D. Minn. May 4, 2015), ECF No. 531.) The Receivership Orders otherwise remain in full force and effect, including as those Orders relate to the Receivership assets that continue to be held by the Gormans.

the benefit of the Gormans (the “Beckman-Gorman transfers”). In total, the Beckman’s transferred \$153,071.20 to the Gormans in this seven-month period. (Summ. Proceeding Pet. for Return of Receiverships Assets from Dennis Gorman and Patricia Edenborg-Gorman (“Petition”), Exs. C, D, E, & F, *SEC v. Cook et al.*, No. 09-3333 (D. Minn. Apr. 9, 2009), ECF Nos. 1205-3, 1205-4, 1205-5, 1205-6.)

Each of the seven Beckman-Gorman transfers originated from the Beckmans’ joint Wells Fargo bank account, number XXX-8793. (the “Beckman Account”). (Decl. of Luz M. Aguilar (“Aguilar Decl.”) ¶¶ 23-26, *SEC v. Beckman et al.*, No. 11-0574 (D. Minn. Mar. 7, 2011), ECF No. 4.) During the course of the Ponzi Scheme, the Beckman Account was funded with at least \$6,663,108.99 in Receivership assets stolen from defrauded investors. (*Id.* at ¶¶ 23-25 & Ex. 4.) When the SEC filed suit against Beckman and his companies, the Court immediately froze the Beckman account that was the source of funding to the Gormans. (Beckman Asset Freeze Order at 5.)

In response to the Receiver’s Summary Proceedings Petition for the return of these assets, the Gormans classified \$13,200.00 of the Beckman-Gorman transfers as reimbursements for purchases made for the Beckmans’ Paseo Del Lago Home. (Dennis Gorman and Patricia Edenborg-Gorman Resp. to Summ. Proceeding Pet. (“Gorman Response”) 6, ¶ 38-55, *SEC v. Cook et al.*, No. 09-3333 (D. Minn. June 8, 2015), ECF No. 1225.) Although the Receiver does not agree that the \$13,200.00 did, in fact,

constitute reimbursements, the Receiver is not moving for summary judgment as to these transfers at this time.²

The subject of this motion is two transfers, totaling \$139,871.20, that the Beckmans made to the Gormans. There is no genuine dispute as to any material fact about these transfers and there is no question that this amount must be returned to the Receiver pursuant to the Court's Receivership Orders and the law of unjust enrichment.

In the first transfer at issue in this motion, the Beckmans paid \$118,371.20 to a title company to purchase the Kennedy Street Home. More specifically, on or about September 18, 2008, the Beckman's made a wire transfer in the amount of \$118,371.20 from the Beckman account to Edwards Abstract and Title Co. for credit to Dennis E. Gorman. (Petition Ex. D.) The funds that the Beckmans transferred were Receivership assets. (Aguilar Decl. ¶¶ 23-26.) The \$118,371.20 was then applied as cash for the purchase of the Kennedy Street Home, which was then titled in the Gormans' names. (Petition Exs. C, D, & E.) This transaction transferred the entire interest in the home to the Gormans. As a result, the home is not subject to any mortgage or other encumbrance. (Petition Ex. E.) The Gormans have possessed and enjoyed this winter home—rent and mortgage free—for more than seven years at the expense of the Ponzi scheme victims whose money was used to purchase it. (*Id.*) The Gormans have not repaid any of the money to the Receiver.

²The Gormans have not produced any receipts for any expenses they incurred on behalf of the Beckmans and the Receiver has not located any such records in the seized files. Moreover, these transfers were made via checks written in round dollar amounts of \$1,000.00, \$1,200.00, \$4,000.00 and \$6,000.00, which are not indicative of specific purchases. (Petition Ex. F.)

In the second undisputed transaction, at or about the same time they purchased the Kennedy Street home for the Gormans, the Beckmans also wrote a check to the Gormans for \$21,500.00 in Receivership assets. (Petition Exs. F, H; Aguilar Decl. ¶¶ 23-26.) The check contained the inscription “We Love You!” (Petition Ex. F.) The Gormans characterize this transaction as an interest-free loan with no due date required. (Petition Ex. H.) Regardless of how it is characterized, this transaction conveyed Receivership assets to the Gormans.

The Gormans have not returned any of the Receivership assets that they have enjoyed them for the past seven years.

II. LEGAL ARGUMENT

A. Standards for Summary Judgment

Summary judgment should be granted “if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The moving party must demonstrate the absence of any genuine dispute regarding material facts, but the existence of a “scintilla” of evidence supporting the non-movant’s position is not enough to defeat a motion for summary judgment. *Tusing v. Des Moines Indep. Cmty. Sch. Dist.*, 639 F.3d 507, 514 (8th Cir. 2011) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)).

If the non-moving party fails to make a showing sufficient to establish that there is a genuine issue for trial about an element essential to the party’s case, summary judgment

must be granted. *Reed v. ULS Corp.*, 178 F.3d 988, 990 (8th Cir. 1999). Summary judgment is mandated—even on typically fact-intensive issues—when the facts and the law support only one reasonable conclusion. *Roth v. U.S.S. Great Lakes Fleet, Inc.*, 25 F.3d 707, 708 (8th Cir. 1994) (citing *McDermott Intern., Inc. v. Wilander*, 498 U.S. 337 (1991)). Although ambiguities must be resolved in the light most favorable to the nonmoving party, summary judgment cannot be denied based on conjecture, surmise, “metaphysical doubt,” or self-serving conclusory statements. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Smith v. Int’l Paper Co.*, 523 F.3d 845, 848 (8th Cir. 2008).

B. The Gormans Must Return at Least \$139,871.20 Pursuant to the Court’s Receivership Orders

The Court’s Receivership Orders, which were served on the Gormans on April 1, 2011, require that “[a]ll persons . . . are ordered to turn over to the Receiver any and all property of any nature . . . and any other assets of any kind which any of the Receiver Estates are the owners of or have an interest in immediately upon receiving notice of the entry of this order.” (Beckman Receivership Order at §IX; *see also id.* at §XII.) There is no dispute that the \$139,871.20 the Beckmans gave to the Gormans constituted Receivership assets. This money was transferred from the Beckman account, which was funded with over \$6 million in Ponzi proceeds. (Aguilar Decl. ¶¶ 23-26; Petition Exs. D, F.) Therefore, pursuant to this Court’s Orders, \$139, 871.20 must be returned to the Receiver for the benefit of the victims of this fraud.

C. The Gormans Were Also Unjustly Enriched by \$139,871.20

Although this Court's Orders clearly require return of these assets, the law of unjust enrichment also requires that the Gormans return \$139,871.20 to the Receiver.

1. The Law of Unjust Enrichment

Unjust enrichment requires the plaintiff to prove that a defendant "knowingly received something of value, not being entitled to the benefit, and under circumstances that would make it unjust to permit its retention." *SEC v. Brown*, 643 F. Supp. 2d 1077, 1083 (D. Minn. 2009) (quoting *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. Ct. App. 1992)). An action for unjust enrichment may be based on the failure of consideration, fraud, or mistake or in "situations where it would be morally wrong for one party to enrich himself at the expense of another." *Anderson v. DeLisle*, 352 N.W.2d 794, 796 (Minn. Ct. App. 1984) (citations omitted), *review denied* (Minn. Nov. 8, 1984).

Unjust enrichment does not require proof that the defendant committed a wrong. *Hartford Fire Ins. Co. v. Clark*, 727 F. Supp. 2d 765, 777-78 (D. Minn. 2010); *Brown*, 643 F. Supp. 2d at 1083; *Kranz v. Koenig*, 484 F. Supp. 2d 997, 1001 (D. Minn. 2007); *United States v. Dieter*, Civ. No. 01-1435, 2003 U.S. Dist. LEXIS 6391, at *48-49 (D. Minn. Apr. 11, 2003); *Honeywell/Alliant Techsystems Fed. Credit Union v. Buckhalton*, No. 2-99-1194, 2000 Minn. App. LEXIS 66, at *8-9 (Minn. Ct. App. Jan 25, 2000). On this point, *United States v. Dieter* is instructive. In *Dieter*, Cory O'Toole gave the proceeds from the sale of his home as a gift to his grandparents, John and Theresa Dieter. No. 01-1435, 2003 U.S. Dist. LEXIS 6391, at *22. Unbeknownst to the Dieters, the

transaction that produced their grandson's gift was the result of his false representations to the purchasers of the home. *Id.* at *40-41. The Court granted summary judgment on the purchasers' claim of the unjust enrichment against the Dieters, finding that although it appeared they were entirely innocent of any bad faith or wrongdoing, it would be unjust for them to retain the gifted proceeds from the sale of the home when the sale was the product of their grandson's misrepresentations. *Id.* at *48-49.

Other courts in Minnesota and elsewhere are in accord. *See, e.g., Brown*, 643 F. Supp. 2d at 1083 (“[A]n unjust enrichment claim does not require a defendant to commit a wrong, but only requires that the defendant benefit from another's wrong.”); *see also Honeywell/Alliant Techsystems*, No. C2-99-1194, 2000 Minn. App. LEXIS 66 at *8-9 (“[D]espite the absence of proof of fraud or illegal conduct on the part of appellants, because of equity, they are not entitled to the money.”). Indeed, summary judgment of unjust enrichment is particularly appropriate where the money at issue was derived from innocent investors' payments to a fraudulent Ponzi Scheme. *Klein v. Georges*, No. 2:12-00076, 2014 U.S. Dist. LEXIS 165154, *10 (D. Utah Nov. 24, 2014); *see also Goldberg v. Chong*, No. 07-20931, 2007 U.S. Dist. LEXIS 49980 (S.D. Fla. July 11, 2007) (granting summary judgment to receiver on claims of both fraudulent transfer and unjust enrichment where perpetrator of fraud paid employee an exorbitant salary when millions of dollars were owed to defrauded investors).

2. The Gormans Were Unjustly Enriched With Proceeds From This Ponzi Scheme

a. The Gormans Knowingly Received Something of Value

The Gormans certainly received something of value from the Receiver Estates. The Beckmans paid \$118,371.20 in Receivership assets to purchase the Kennedy Street for the Gormans. The Kennedy Street Home is now titled in the Gormans' names, and the Gormans have made beneficial use of this home for more than seven years without repaying the Receivership for any of the funds that were used to purchase it. This is not the Gormans' only home. In addition to the Kennedy Street home, the Gormans also own homes in Elk River and Cass County, Minnesota. (Declaration of Nathan Louwagie ("Louwagie Decl."), Exs. A and B.)

The Beckmans also gave the Gormans \$21,500.00 in cash, which the Gormans characterize as an interest-free loan. (Petition Exs. C, D, E & F.) Not only did the Gormans receive the value of this cash, they received the additional value of not having to pay interest on this loan. Indeed, they have never paid anything at all toward this loan, either to the Beckmans or to the Receiver.

The value of the Receiver assets held by the Gormans is not only counted in dollars, it must also be assessed from the lens of the victims of this fraud whose loss was the Gormans' gain. While the Gormans gained a third home and tens of thousands of dollars in cash, the victims of this Ponzi scheme were losing their homes and struggling to pay for the basic necessities of life.

b. The Gormans Were Not Entitled to the Possession of the Receivership Assets they Received and It Would Be Unjust For Them to Keep It

The Gormans state that the Beckmans funded the purchase of the Kennedy Street home and the additional \$21,500.00 cash as an interest-free loan. (Gorman Response at 4-5.) But a loan of stolen assets is not a license to keep those assets. Indeed, the nature of the transaction through which the Gormans received these Receivership assets is irrelevant to the Receiver's unjust enrichment claim. *See Brown*, 643 F. Supp. 2d at 1084 (holding that a bank's retention of payments received in consideration for a legal mortgage transaction could constitute unjust enrichment); *see also Depompei v. Santabarbara*, No. 2015-18, 2015 Ohio App. LEXIS 10, at *P37 (Ohio Ct. App. Jan. 8, 2015) (holding retention of an interest free loan constituted unjust enrichment).

The money that the Beckmans gave to the Gormans was not the Beckmans to give—it was stolen from investors. The Gormans had no right to a winter home and cash funded by the victims of this fraud. The Gormans' possession and enjoyment of these Receivership assets at the expense of the victims of this fraud, who have recovered only 6.9 cents for every dollar they lost, is the essence of unjust enrichment and violates fundamental principles of justice, equity, and good conscience. Distributions, Cook/Kiley Beckman Receiverships, www.cookkileyreceiver.com/distributions.cfm (last visited Oct. 23, 2015). The Gormans are not entitled to keep the \$139,871.20 in Receivership assets they received from the Beckmans and must return those funds to the Receiver for the benefit of the victims of this fraud.

c. A Constructive Trust Should Be Imposed Over the Kennedy Street Home to Remedy the Unjust Enrichment

The Gormans must repay the \$139,871.20 in Receivership assets that they continue to possess. At a minimum, however, the Court should establish a constructive trust over the Kennedy Street Home. A constructive trust arises where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he or she would be unjustly enriched if permitted to retain it. *United States v. Dieter*, Civ. No. 01-1435, 2003 U.S. Dist. LEXIS 6391, at *50 (D. Minn. Apr. 11, 2003). The imposition of a constructive trust over the property would allow the Receiver to liquidate the property, which has an estimated current value of \$112,287, for the benefit of the victims of this Ponzi Scheme. (Louwagie Decl., Ex. C.)

CONCLUSION

The judgment the Receiver seeks in this motion is one founded in the clear language of this Court's Orders as well as justice and equity. In short, under no circumstances should the Gormans be allowed to maintain a home and tens of thousands of dollars in cash funded by the victims of this fraud – especially when those victims are left with catastrophic losses. There is no genuine dispute as to any material fact that the Beckmans paid \$118,371.20 in Receivership assets to purchase the Kennedy Street Home for the Gormans. Similarly, there is no genuine dispute as to any material fact that the Beckmans transferred \$21,500.00 in Receivership assets without any obligation to repay it. If not for the Beckmans fraud, the Gormans would not possess the Kennedy Street Home or have the benefit of an interest free loan for the past seven years. The only

reasonable conclusion is that it would be unjust to allow the Gormans to keep their windfall. Accordingly, the Receiver respectfully requests that the Court enter summary judgment that Dennis Gorman and Patricia Edenberg-Gorman must return \$139,871.20 in Receivership assets to the Receiver so this money can be returned to the victims from whom it was stolen.

Dated: November 4, 2015

Respectfully submitted,

s/ Tara C. Norgard

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