

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

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

v.

TREVOR COOK et al.,

Defendants,

R.J. ZAYED,

Receiver.

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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.

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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.

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

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## INTRODUCTION AND STATEMENT OF CASE

### I. STATEMENT OF FACTS

Dennis Gorman and Patricia Edenborg-Gorman (the "Gormans") were significant victims of the Ponzi scheme perpetrated by the Defendants in these cases. (Edenborg-Gorman Aff. ¶ 1.) In 2008, the Gormans invested virtually all of their personal savings – an amount exceeding \$100,000.00 – into the Currency Program. They never received any return on their investment. (*Id.*)

Before investing their personal savings into the Currency Program, the Gormans purchased a home located at 1915 Kennedy Street in Mission, Texas (the "Texas Home"), with funds transferred by their niece and her husband, Hollie Beckman and Jason Bo-Alan Beckman. (*Id.* at ¶ 2.) The Texas Home is modest in size (approximately 1,200 square feet), the purchase price for the Texas Home was just under \$120,000, and the Texas Home was not purchased as a luxury. (*Id.* at ¶ 3.) The Gormans' relocation to Texas, at least during winter months, was made necessary by Patricia Edenborg-Gorman's persistent health issues. (*Id.* at ¶ 4.) Expenses relating to Ms. Edenborg-Gorman's health issues, coupled with the Gormans' loss of virtually all of their personal savings, have left the Gormans with very few assets. (*Id.* at ¶ 5.)

On September 18, 2008, Hollie Beckman and Jason Bo-Alan Beckman transferred \$118,371.20 to a title company, and such funds were then applied to the Gormans' purchase of the Texas Home. (*Id.* at ¶ 6.) During the same time period, Hollie Beckman and Jason Bo-Alan Beckman also transferred an additional \$21,500.00 to the Gormans

(along with the \$118,371.20 transfer, the "Transfers"). (*Id.* at ¶ 7.) The Gormans have acknowledged that this second transfer was intended to be a loan. (*Id.*) Hollie Beckman held a job in the months preceding the Transfers to the Gormans and she was making an average of approximately \$45,000.00 annually in her position as Director of Operations for Minneapolis Plastic Surgery, LTD. (Beckman Aff. ¶ 4.) Jason Bo-Alan Beckman held a job having nothing to do with the receivership or surrounding facts and circumstances at that time as well, and in the months preceding the Transfers, Mr. Beckman was making an average of approximately \$500,000.00 annually in his position as a Portfolio Manager for Oxford Private Client Group. (*Id.* at ¶ 5.) Hollie Beckman and Jason Bo-Alan Beckman deposited their income from these jobs into the joint Wells Fargo account ending in -8793 (the "Joint Account") from which they made the Transfers. (*Id.* at ¶ 6.) Hollie Beckman and Jason Bo-Alan Beckman also maintained a personal investment account that contained funds not derived from illicit activity, and the Beckmans also transferred significant funds from that personal investment account into the Joint Account from which they made the Transfers. (*Id.* at ¶ 7.) The entirety of the \$139,871.20 transferred to the Gormans from the Joint Account was intended to be funded from and, in fact, *was* funded solely from legitimate, non-receivership assets. (*Id.* at ¶ 8.)

## **II. LEGAL ARGUMENT**

### **A. Summary of Argument**

Summary judgment may be granted only if all material facts are undisputed. Orders entered in these cases do not contain a factual finding that funds transferred from

the Joint Account in 2008 were transfers of receivership assets, and evidence offered by the Receiver makes clear that sufficient, legitimate funds were deposited into the Joint Account to fund the Transfers in full. Moreover, according to Hollie Beckman, the Transfers were intended to be and, in fact, *were* funded exclusively from legitimate, non-receivership assets. Given this clear, ongoing dispute regarding perhaps the most material fact at issue in this matter, summary judgment must be denied.

Even if the Receiver could demonstrate that no issues of material fact remain (and he cannot), the entry of a summary judgment would be inappropriate because the Receiver's claims are legally insufficient. The Eighth Circuit Court of Appeals has held that unjust enrichment is an equitable doctrine that disallows recovery where there is an adequate remedy at law. The Receiver had an adequate remedy at law in this case – a claim for fraudulent transfer. This Court has determined, on more than one occasion, that fraudulent transfer claims constitute adequate legal remedies that displace unjust enrichment claims. Finally, because the Receiver's unjust enrichment claim cannot stand, his request to impose the *remedy* of a constructive trust must also be denied.

#### **B. Summary Judgment Standard**

Summary judgment is inappropriate unless there is no genuine issue of material fact. *See* Fed. R. Civ. P. 56. Summary judgment cannot be granted if there is evidence that a reasonably jury could rely on in order to return a verdict for the nonmoving party, here, the Gormans. *E.g. Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears the burden of proving that there is a complete absence of evidence to

substantiate the non-moving party's case. *In re Pomaville*, 190 B.R. 632, 636 (Bankr. D. Minn. 1995) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). In order to avoid summary judgment, the nonmoving party must only show that there is a single material fact issue for determination at trial. *Id.*

In determining whether any material fact issue exists, the Court is to view the evidence in the light most favorable to the nonmoving party. *Id.*; see *Enterprise Bank v. Magna Bank of Missouri*, 92 F.3d 743, 747 (8th Cir. 1996). Moreover, the nonmoving party need not establish that the factual dispute would be resolved in its favor; rather, all that is required is a showing that reasonable factfinders could differ as to its resolution. *Liberty Lobby, Inc.*, 477 U.S. at 248–249. If reasonable factfinders could differ, summary judgment must be denied. *Id.* at 250.

**C. Existing Receivership Orders Do Not Entitle the Receiver Summary Judgment Because the Transferred Funds May Have Been (and Likely Were) Non-Receivership Assets.**

The Receiver's conclusory argument that the Court's Receivership Orders conclusively resolve this dispute must be rejected because the \$139,871.20 in transfers at issue could just as easily have been (and according to Hollie Beckman's undisputed testimony, was) financed entirely with legitimate assets.

The Receiver argues it is undisputable that the \$139,871.20 in transfers made to the Gormans was funded *solely* by receivership assets since the joint account contained more than \$139,871.20 in receivership funds at the time. But the opposite is also true—because the joint account also contained more than enough in legitimate funds to make

the transfers at issue, the transfers could just as easily have been funded solely from legitimate sources. Because the transfers could have been funded solely from legitimate assets, and in fact Hollie Beckman's undisputed testimony is that they *were* funded solely by legitimate assets, a material issue of disputed fact remains for resolution at trial and summary judgment is not appropriate.

As to the Court's Receivership Orders upon which the Receiver relies, they are inapposite. The Beckman Receivership Order states, as relevant here, that "all funds, accounts, and other assets held by or for the benefit of Relief Defendant Hollie Beckman which were received, directly or indirectly, from the Defendants or were acquired with funds or other assets received, directly or indirectly, from the Defendants" are "Receiver Estates." Order Appointing Receiver at 1-2, *SEC v. Beckman et al.*, 11-cv-0574, Dkt. No. 10. As noted, the Receiver's argument fails because—undisputedly—significant assets in the joint account were not in any way received or acquired, directly or indirectly, from the Defendants. Indeed, nearly \$750,000 of the deposits in the Beckman's accounts were *undisputedly untainted*. See Aguilar Decl. ¶ 25 (stating that while significant deposits into the Beckman's accounts were tainted, "\$746,000 [was] deposited into the Beckman's accounts from other sources" that were legitimate, including "Hollie Beckman's employer"). While Summary Proceedings have been allowed for purposes of recovering "assets transferred from or by any Receivership entity," the joint account is not a receivership entity, and it is undisputed that certain assets contained in that account were

legitimate *non-Receivership assets*. Order Allowing Summ. Proceedings at 3, *SEC v. Cook et al.*, 09-cv-3333, Dkt. No. 380.

While certain assets deposited in the joint account are Receivership assets, approximately \$746,000 of funds in the joint account were not and this amount was more than enough to finance the \$139,871.20 loan to the Gormans. Accordingly, the Receiver cannot provide undisputed facts sufficient to demonstrate, particularly at the summary judgment stage where all facts are construed against it, that *any*, let alone *all*, of the assets constituting the loan were receivership assets. Summary judgment must be denied.

**D. The Equitable Unjust Enrichment Claim Is Not Legally Cognizable Because the Receiver Had an Adequate Remedy at Law.**

The Receiver's claim for unjust enrichment cannot survive as a matter of law. Unjust enrichment is an equitable doctrine that disallows recovery where there is an adequate remedy at law. *See United States v. Bame*, 721 F.3d 1025, 1030-31 (8th Cir. 2013); *Curtis v. Altria Grp., Inc.*, 792 N.W.2d 836, 852 (Minn. Ct. App. 2010). In this case, the Receiver had an adequate remedy at law available by way of the Minnesota Uniform Fraudulent Transfer Act ("MUFTA"). Minn. Stat. §§ 513.41-51.

The purpose MUFTA is to prevent debtors from putting property which is available for the payment of their debts beyond the reach of their creditors. *Kummet v. Thielen*, 298 N.W. 245, 247 (Minn. 1941). Although the "Ponzi scheme presumption" is not available under Minnesota law, the Receiver could have asserted an actual fraud claim based on a "badges of fraud" analysis. *See Finn v. All. Bank*, 860 N.W.2d 638 (Minn. 2015) (rejecting the "Ponzi scheme presumption" to presume profits were not

received for reasonably equivalent value); *In re Sherman*, 67 F.3d 1348, 1353-54 (8th Cir. 1995) (courts may consider circumstantial evidence of "badges of fraud" in fraudulent transfer analysis); *see also Zayed v. Allen*, No. 13-CV-1896 SRN/SER, 2015 WL 1038277, at \*8 (D. Minn. Mar. 10, 2015) (allowing plaintiff to amend summary judgment motion on fraudulent transfer claim to substitute a "badges of fraud" basis for its argument based on Ponzi scheme presumption in light of the *Finn* decision).

Courts have found that fraudulent transfer claims constitute adequate legal remedies that displace unjust enrichment claims. *See, e.g., Kelley v. Coll. of St. Benedict*, 901 F.Supp.2d 1123, 1132 (D. Minn. 2012) (concluding that MUFTA is an adequate remedy at law which precludes unjust enrichment recovery); *Arena Dev. Grp., LLC v. Naegele Commc'ns, Inc.*, No. CIV. 06-2806 ADM/FLN, 2008 WL 1924179, at \*5 (D. Minn. Apr. 29, 2008) (same).

It makes no difference that the Receiver is now barred by the statute of limitations from recovering on a fraudulent transfer claim. *See, e.g., Mon-Ray, Inc. v. Granite Re, Inc.*, 677 N.W.2d 434, 440-41 (Minn. Ct. App. 2004) (dismissing unjust enrichment claim where plaintiff "had an available and adequate remedy at law that they failed to timely pursue"); *Johnson v. Res. Bancshares Mortgage Grp.*, No. CIV.972378 (DWF/AJB), 2000 WL 34424097, at \*2 (D. Minn. May 15, 2000) (dismissing unjust enrichment claim where, "but for the statute of limitations issue, the [plaintiffs] had an adequate remedy at law for any damages they may have sustained"); *Laitinen v. Per Mar Sec. & Research Corp.*, No. 11-3120, 2012 WL 695897, at \*4 (D. Minn. March 5, 2012)

("Although this relief may be time barred by the applicable statute of limitations, such a fact does not affect an unjust enrichment analysis."); *Johnson*, 2000 WL 34424097 at \*2 (concluding that an adequate statutory remedy precluded unjust enrichment recovery, even though the statute of limitations had run on the statutory claim).

Likewise, the unjust enrichment analysis is not affected by the possibility that a fraudulent transfer claim brought by the Receiver may have failed.\* *See Arena Dev. Grp., LLC v. Naegele Commc'ns, Inc.*, Civ. No. 06-2806, 2007 WL 2506431, at \*11 (D. Minn. Aug. 30, 2007) (dismissing unjust-enrichment claim despite plaintiffs' argument that "if their fraudulent transfer claims fail, they will not have an adequate remedy at law"); *Munshi v. J-I-T Servs., Inc.*, No. A06-346, 2007 WL 92852, at \*2 (Minn. Ct. App. Jan. 16, 2007) (although a "remedy at law which is practically ineffective is not an adequate legal remedy," the mere fact that a plaintiff "fail[s] to pursue [an] available legal remedy [does] not entitle [him] to relief"); *Drobnak v. Andersen Corp.*, 561 F.3d 778, 787 (8th Cir. 2009) (affirming dismissal of equitable claims because "plaintiffs *would have* had an adequate legal remedy ... if they had adhered to the ... Rule 9(b) pleading requirements") (emphasis added). Because the Receiver's unjust enrichment claim is legally deficient, granting summary judgment in favor of the Receiver on such a claim would be wholly inappropriate.

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\* The Gormans do not admit that the Receiver has a viable claim for fraudulent transfer and, in fact, expressly reserve all arguments to the contrary.

**E. The Imposition of a Constructive Trust Is Not Justified Because the Receiver's Unjust Enrichment Claim Is Not Legally Viable.**

A constructive trust is "designed to provide a remedy for the prevention of unjust enrichment . . . ." *Wilson v. Skogerboe*, 379 N.W.2d 696, 698 (Minn. Ct. App. 1986) (quoting *Knox v. Knox*, 25 N.W.2d 225, 228 (Minn. 1946)). Because the Receiver's unjust enrichment claim fails as a matter of law, there is no remaining basis for the court to establish a constructive trust. *See Manley Dev., Inc. v. Smith*, No. A13-0877, 2014 WL 684678, at \*8 (Minn. Ct. App. Feb. 24, 2014) (constructive trust claim failed because plaintiff's unjust enrichment claim was properly dismissed); *see also Creative Mktg. Associates, Inc. v. AT & T*, 476 F.3d 536, 539 (8th Cir. 2007) (affirming district court's dismissal of constructive trust claim when underlying claims for fraud and breach of fiduciary duty were time-barred by Missouri law).

**CONCLUSION**

A dispute of material fact clearly exists and the Receiver's claims are legally invalid in any event. As a result, the Receiver's Motion seeking entry of summary judgment must be denied.

Dated: April 15, 2016

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