

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

U.S. COMMODITY FUTURES
TRADING COMMISSION,
Plaintiff,

v.

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

TREVOR COOK et al.,
Defendants,

R.J. ZAYED,
Receiver.

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,
Plaintiff,

v.

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

TREVOR G. COOK, et al.,
Defendants,

R.J. ZAYED,
Receiver.

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,
Plaintiff,

v.

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

JASON BO-ALAN BECKMAN, et al.,
Defendants,

R.J. ZAYED,

Receiver.

Tara C. Norgard, Carlson, Caspers, Vandenburg, Lindquist & Schuman,
Counsel for the Receiver, R. J. Zayed.

Edwin H. Caldie and Sarah Hewitt, Stinson Leonard Street LLP, Counsel
for the Gormans.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the Receiver's motion for summary judgment for return of assets from Dennis Gorman and Patricia Edenborg-Gorman. [Doc. Nos. 1182 (Civ. No. 09-3332), 1255 (Civ. No. 09-3333) and 562 (Civ. No. 11-574)].

I. Background

This case arises out of Ponzi scheme principally orchestrated by Trevor Cook, Jason Beckman, Patrick Kiley, Gerald Durand and Christopher Pettengill (the "Cook Ponzi scheme"). To preserve assets on behalf of the victims of this scheme, this Court entered orders in these cases to freeze the assets of the Cook 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." [Doc. Nos. 21 (Civ. No. 09-3332), 51 (Civ. No. 09-3333)]

and 9 (Civ. No. 11-574)]. The Court also appointed R.J. Zayed as Receiver over the estates of the Cook Ponzi scheme, including the estate of Jason Beckman and his wife, Hollie Beckman, The Oxford Private Client Group, LLC (“OPCG”) 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 Jason Beckman and/or OPCG, and tasked the Receiver with recovering stolen assets from the scheme and returning them to defrauded investors. [Doc. Nos. 96 (Civ. No. 09-3332), 68 (Civ. No. 09-3333) and 10 (Civ. No. 11-574)].

The Receiver asserts that during the course of the Cook Ponzi scheme, the Beckmans made seven transfers totaling \$153,071.20 to Dennis Gorman and Patricia Edenborg-Gorman, Hollie Beckman’s aunt and uncle, from the Beckmans’ Wells Fargo bank account number XXX-8793 (“Wells Fargo account”). This bank account is specifically identified in the Beckman Asset Freeze Order. [Doc. No. 10 at 5 (Civ. No. 11-574)] By this motion, the Receiver seeks to recover \$139,871.20 of these funds.

The Receiver alleges that the funds given to the Gormans are covered by the Court’s Asset Freeze and Receivership Orders. As such, the Receiver argues that the Gormans are obligated to return the funds under the terms of those

Orders. Even if the transfers were not subject to these Orders, the Receiver also asserts that permitting the Gormans to retain these funds would constitute unjust enrichment, as the funds constitute a gain the Gormans were not entitled to the benefit of, and it would be unjust to permit the Gormans to retain the value of the funds that can be traced to the Cook Ponzi scheme.

The Gormans respond that the funds are not covered by the Court's Orders because the Beckmans had sufficient funds in their accounts, unrelated to the Cook Ponzi scheme, to finance the transfers. Additionally, the Gormans allege that unjust enrichment is not available because the Receiver has an adequate remedy available at law, in the form of a claim under the Minnesota Uniform Fraudulent Transfer Act ("MUFTA").

II. Standard for Summary Judgment

Summary judgment is appropriate if, viewing all the facts in the light most favorable to the non-moving party, there is no genuine dispute as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317 322-23 (1986). The party seeking summary judgment has the burden of showing that there is no disputed issue of material fact. Celotex, 477 U.S. at 323. "A dispute is genuine if the evidence is

such that it could cause a reasonable jury to return a verdict for either party; a fact is material if its resolution affects the outcome of the case.” Amini v. City of Minneapolis, 643 F.3d 1068, 1074 (8th Cir. 2011) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 252 (1986)). The party opposing summary judgment cannot rest upon mere allegations or denials; rather, it must set forth specific facts showing that there is a genuine issue for trial. Krenik v. County of Le Sueur, 47 F.3d 953, 957 (8th Cir. 1995).

III. Discussion

A. The Court’s Receivership Orders

The Receiver asserts there are two transfers at issue in this motion. The first transfer involves \$118,371.20 transferred from the Beckmans’ Wells Fargo account to a title company to purchase the Gorman’s Texas home on September 18, 2008. The second transfer involves a check written by Hollie Beckman from the Wells Fargo account to the Gormans in the amount of \$21,500. The parties do not dispute that this later transfer represents an interest-free loan from the Beckmans. These transfers took place during the course of the Cook Ponzi scheme, which took place from at least August 2006 through July 2009. Further,

the source of funds into the Wells Fargo account can be clearly traced to the Cook Ponzi scheme.

Luz Aguilar is a Senior Accountant with the United States Securities and Exchange Commission (“SEC”) and in that role Aguilar reviewed the SEC’s files concerning the Cook Ponzi scheme, including the bank accounts of Jason and Hollie Beckman. [Doc. No. 4, Aguilar Decl. ¶¶ 1, 3 and 7 (Civ. No. 11-574)]. Based on the review of these accounts, Aguilar concluded that the Beckmans received millions of dollars from accounts relating to the Cook Ponzi scheme. [Id. ¶ 23] He noted that from September 2006 through March 2009, the Beckmans deposited approximately \$7.7 million from accounts containing investor funds related to the Cook Ponzi scheme into their personal accounts, and that such amount far exceeded deposits from other sources. [Id. ¶¶ 24 and 25] Aguilar prepared a chart to display the withdrawals and source of deposits into the Wells Fargo account as well as other accounts. [Id. Ex. 4 Attachment B]

Based on the undisputed record, the Receiver asserts that the Court’s Asset Freeze and Receivership Orders cover the September 2008 transfers to the Gormans. The Asset Freeze Order expressly includes “loans by any Defendant, Relief Defendant, and/or Related Entity to any family members, including but

not limited to approximately \$110,000 loaned by Defendant Beckman or Relief Defendant Hollie Beckman to Relief Defendant Hollie Beckman's aunt, uncle or other family members." [Doc. 9 at 9 (Civil No. 11-574)] In addition, the Receivership Order provides that "[a]ll persons . . . are ordered to turn over to the Receiver any and all property of any nature, including but not limited to all real estate and personal property . . . and any other assets of any kind which any of the Receiver Estates are owners of or have an interest in immediately upon receiving notice of the entry of this order." [Doc. No. 10 at § IX (Civ. No. 11-574)] The Gormans were served copies of the Asset Freeze and Receivership Orders on April 1, 2011. [Doc. 522, Ex. G (Civ. No. 11-574)]

The Gormans argue that the Beckmans had sufficient non-Ponzi scheme funds in the Wells Fargo account to serve as the source of the funds for the transfers. They point to Hollie Beckman's \$45,000 annual salary, Jason Beckman's \$500,000 annual salary from OPCG, and the Beckman's investment returns as potential sources of legitimate funds to cover the \$139,871.20 transferred to them.

The record does not support the Gormans' argument, however. First, OPCG is a Receiver Estate and was prominent in the Cook Ponzi scheme. As

such, any salary from OPCG to Jason Beckman is money obtained from the Ponzi scheme and clearly subject to the Court's Asset Freeze and Receivership Orders.

Next, from August 2006 through January 2008, approximately \$15,000 was deposited into the Wells Fargo account from Hollie Beckman's employer, Minneapolis Plastic Surgery Center. [Doc. No. 4, Aguilar Decl. Ex. 4, Attachment B] The last deposit, in the amount of \$317.45, was made more than eight months before the Beckmans transferred money to the Gormans for the Texas home. Thus, in addition to misrepresenting Hollie's salary, the timing and amount of the last deposit weighs against a finding that legitimate funds were used to purchase the Texas home.

The Court finds that other deposits into the Wells Fargo account are also too removed from the date the transfers were made to the Gormans, or are insufficient in amount, to support the Gormans' position that the funds at issue were transferred from legitimate sources. For example, one such transfer in the amount of \$9,243 from ECA Marketing, Inc. was made in January 2007, over two and one half years prior to the September 2008 transfers at issue. (Aguilar Decl., Ex. 4, Attachment B.) Other deposits into the Wells Fargo account include child

support payments in the amount of \$3,600 or repayments for air tickets and vacations that the Beckmans purchased.

On the other hand, the record demonstrates that on September 15, 2008, Crown Forex, a Receivership Entity, wired \$320,000 to the Beckmans' Wells Fargo account. [Doc. No. 4-2, Aguilar Decl. Ex. 4, Attachment A] Three days later, on September 18, 2008, the Beckmans wired \$118,371.20 to the Gormans for the purchase of the home in Texas, and presented them a check in the amount of \$21,500 which represented an interest free loan.

Because the funds can be clearly traced to the Cook Ponzi scheme, the Court finds that the Receivership Orders entered in the above cases requires the Gormans to return \$139,871.20 to the Receiver for the benefit of the victims of the scheme.

B. Unjust Enrichment

In the alternative, the Receiver asserts that permitting the Gormans to retain the \$139,871.20 at issue would constitute unjust enrichment. To succeed on this claim, the Receiver must prove that the Gormans "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 rooted in circumstances “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, 792 (Minn. Ct. App. 1984), review denied (Minn. Nov. 8, 1984).

The Gormans argue that the Receiver’s claim for unjust enrichment fails because pursuant to Minnesota law, “[a] party may not have equitable relief where there is an adequate remedy at law available.” United States v. Bame, 721 F.3d 1025, 1030 (8th Cir. 2013) (quoting ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc., 544 N.W.2d 302, 305 (Minn. 1996)). In this case, the Gormans argue that the Receiver could have brought a claim based on actual fraud under MUFTA, Minn. Stat. §§513.41-51.

The purpose of MUFTA is to prevent debtors from putting property beyond the reach of their creditors to avoid paying their debts. Kummet v. Thielen, 298 N.W. 245, 247 (Minn. 1941). The elements of a fraudulent transfer claim under MUFTA are as follows: actual fraudulent intent by the Beckmans, the Beckmans’ insolvency and a lack of reasonably equivalent value in the exchanges. Finn v. Alliance Bank, 860 N.W.2d 638, 654 (Minn. 2015).

In this summary proceeding, the Receiver did not assert a claim under MUFTA, and there is no evidence or allegation that a fraudulent transfer occurred when the Beckmans gave the funds to the Gormans. Rather, it appears the Beckmans provided the money to the Gormans out of goodwill to a family member – as there is evidence in the record Ms. Edenborg-Gorman needed to move to Texas for medical reasons. Accordingly, the Court finds that MUFTA has no application in this case.¹

As to the merits of the unjust enrichment claim, the record is undisputed that the Gormans received \$139,871.20 without being entitled to the benefit of such funds, and that because these funds were obtained through an illegal Ponzi scheme, it would be unjust to permit the Gormans to retain such funds. The Receiver is thus entitled to summary judgment on the unjust enrichment claim.

¹ In support of its position, the Gormans cite to Judge Nelson’s decision in a separate summary proceeding in which she allowed the Receiver to amend the complaint to assert a claim under MUFTA based on “badges of fraud” rather than a Ponzi presumption. Zayed v. Allen, No. 13-1896, 2015 WL 1038277 at *8 (D. Minn. Mar. 10, 2015). That proceeding is distinguishable from this proceeding, however, as the former case was brought against “winning investors” and in particular involved the Receiver’s attempts to obtain the proceeds of a home in Texas that was titled in the Beckmans’ name, but occupied by Hollie Beckman’s parents.

IT IS HEREBY ORDERED THAT:

The Receiver's Motions [Doc. Nos. 1182 (Civ. No. 09-3332), 1255 (Civ. No. 09-3333) and 562 (Civ. No. 11-574)] are GRANTED. Dennis Gorman and Patricia Edenborg-Gorman are hereby ordered to pay the Receiver \$139,871.20 within 30 days of the entry of this order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 29, 2016

s/Michael J. Davis
MICHAEL J. DAVIS
UNITED STATES DISTRICT COURT