

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

R.J. ZAYED, In His Capacity As Court-Appointed Receiver For Oxford Global Partners, LLC, Universal Brokerage FX, and Other Receiver Entities,

Plaintiff,

v.

David and Dao Allen, Judith Averett, Patricia and Jasper Calandra, Rose Furner, Mark Hanby, Adel ("A.K.") Hilal, Geraldine Jackman, Norma Johnson, Willis Wayne King, Don and Pamela Labbee, Andrew Lyon, Jeffrey Lyon, Jeffrey Maki, Steven Perkins, Richard Plantan, Douglas Reed, David Sherman, John Sterback, Mark Stoltenberg, Jane Wamsley as trustee for the Glen Van Lehn Living Trust, Michael ("Bruce") Wu, Robert and Dianne Birk, Margaret Anderson, Mary Francoeur, George and Shirley Janssen, Joseph Koehnen, and Katherine Sobieck,

Defendants.

Civil Action No. 13-cv-1896 (SRN/SER)

**DEFENDANTS ROBERT AND DIANNE  
BIRK'S MEMORANDUM IN  
OPPOSITION TO SUMMARY  
JUDGMENT**

**SUMMARY OF ARGUMENT**

Robert and Dianne Birk (the "Birks") hereby submit this Memorandum in Opposition to the Summary Judgment Motion asserted by the Receiver. In their Affidavit (Dkt #147), the Birks raise genuine issues of fact precluding summary judgment. Rather than ask the Court for this matter to be scheduled for trial, the Birks are willing to stipulate to a judgment against them in the amount of \$23,302.85.

It is the position of Birks that the mathematics employed by the Receiver wherein which he seeks a \$112,608.29 judgment in excess profits does not properly account for three categories:

- reimbursement of expenses to the Birks
- money the Birks spent to improve the "little house" and
- personal property of the Birks sold by the Receiver.

It is the position of the Birks that the sums itemized in their Affidavit were expended in good faith and for which the Receiver received equivalent value (Minn. Stat. § 513.48(a)). With respect to the personal property sold by the Receiver, that property was essentially converted into the bankruptcy estate. It was personal property that, at the time of the initiation of the Receivership, happened to be in the possession of Bo Beckman. That reality should not deprive the Birks of the value of their property.

When the foregoing items are deducted from the amount otherwise sought by the Receiver, the net owing (for which the Birks are willing to have judgment entered) is \$23,302.85.

Although the Affidavit presented by the Birks creates a "material issue of fact" which would preclude summary judgment for the Plaintiff, as the Birks indicate in their Affidavit (see paragraph 7), they are willing to merely have this matter resolved by the granting of a judgment to the Receiver in the amount of \$23,302.85.

Dated: April 29, 2014

**CHESTNUT CAMBRONNE PA**

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**ATTORNEYS FOR DEFENDANTS  
ROBERT AND DIANNE BIRK**