

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

Case No: 013-cv-1896 SRN/ SER

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.

**REPLY IN SUPPORT OF RECEIVER'S
AMENDED MOTION FOR SUMMARY JUDGMENT**

In their responses to the Receiver's Amended Motion for Summary Judgment on his claim for unjust enrichment, Robert and Dianne Birk ("the Birks") and Adel ("A.K.") Hilal have not raised any genuine dispute as to any material fact. Defendant Mark Stoltenberg has not opposed the Receiver's Motion. The Receiver therefore respectfully submits that summary judgment of unjust enrichment should be entered against each of these remaining Winning Investor Defendants.

I. There Is No Genuine Dispute that the Birks Were Unjustly Enriched

The Birks do not dispute that every dollar of the \$300,459.65 they received from the Beckmans was stolen from investors in this Ponzi scheme. The Receiver has shown that \$101,997.94 of these stolen funds was funneled to the Birks as "gifts," without consideration of any kind, and in violation of the Court's Asset Freeze and Receivership Orders. (Receiver's Op. Br. at 10, 16-17, ECF No. 177.) The Birks do not contest this fact—in fact, they concede it. (Kaczrowski Decl. ¶ 11, Ex. 9 at 68-126 (Birk handwritten notations of "support gifts" on bank statements).)

The Receiver has further established, with supporting case law, that the Birks were unjustly enriched by those gifts. *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, *48-49 (D. Minn. Apr. 11, 2003); *Honeywell/Alliant Techsystems Fed. Credit Union v. Buckhalton*, C2-99-1194, 2000 Minn. App. LEXIS 66, *8-9 (Minn. App. Jan. 25, 2000). The Birks do not respond to this law.

Indeed, the Birks' response is entirely silent on the \$101,997.94 in stolen funds that the Beckmans gave to the Birks from November 29, 2009 to February 9, 2011. With no dispute of fact or law that the Birks were unjustly enriched with \$101,997.94 in "gifts" from the Beckmans, summary judgment in at least this amount should be entered.

The Birks do oppose the Receiver's motion insofar as it relates to expenses they say they paid for the "little house" in Texas and to personal property they say was seized and sold by the Receiver. (Birk Resp. Br. at 2, ECF No. 177.) However, the Birks do not explain how their affidavit can overcome the Court's previous decisions on these issues.

The Court has already found that the Birks had no cognizable interest in the "little house" and that any equitable claim they may have had in it "would have to be offset by the rent that Beckman failed to collect." Mem Op. & Order at 2, SEC v. Beckman, 11-cv-0574, ECF No. 214. There simply is no viable fact dispute as to the Birks' alleged payments related to the "little house." The Court has already decided this issue. *Id.*

The Court has also already decided the issue of personal property. The Birks do not contest that they had a full and fair opportunity to identify and make a claim to any personal property during the public hearings that were held as part of the Receiver's motion to sell those items—and that they failed to do so. Here again, there is simply no legitimate fact dispute about personal items that the Birks now claim belonged to them. The Court has already decided that every item the Receiver has sold has been property of the Receivership and in full accordance with all applicable laws. Order Granting Receiver's Motion for Sale of Certain Personal Property in His Possession, *SEC v.*

Beckman et al., 11-cv-0574, ECF No. 124; Order Confirming Sale of Paseo Del Lago Property, *SEC v. Beckman*, 11-cv-0574, ECF No. 209.

The Birks received a windfall of stolen funds from this Ponzi scheme while the people from whom it was stolen are left with nothing. There is no genuine issue of disputed fact to preclude the Receiver's motion for summary judgment of unjust enrichment as set forth in his opening brief.

II. There Is No Genuine Dispute that Hilal was Unjustly Enriched

Hilal's mistaken belief that he was investing in British bonds is not a defense to a claim for unjust enrichment. *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, *48-49 (D. Minn. Apr. 11, 2003); *Honeywell/Alliant Techsystems Fed. Credit Union v. Buckhalton*, C2-99-1194, 2000 Minn. App. LEXIS 66, *8-9 (Minn. App. Jan. 25, 2000). Hilal's argument as to good faith and reasonably equivalent value relate to the fraudulent transactions under MUFTA, they are not defenses to the Receiver's unjust enrichment claim.

Echoing part of the law on unjust enrichment, Hilal argues “there was not a failure of consideration, fraud, or mistake and so on.” To the contrary, there is no fact dispute that Hilal did not give any consideration for the \$7,201.14 in false profits he received from this Ponzi scheme. Nor is there any material dispute that the profits he received were stolen from other investors. And finally, although Hilal omits this part of the law from his argument, there is no dispute that this situation is one where it would be morally

wrong for him to keep \$7,201.14 that was stolen from other investors, especially when he is already keeping 100% of the so-called “investment” he made in this Ponzi scheme.

III. There Is No Genuine Dispute that Stoltenberg was Unjustly Enriched

Defendant Stoltenberg did not respond to the Receiver’s amended motion. With no material facts in dispute as to the Receiver’s unjust enrichment claim against him, summary judgment should be entered against him in the amount of \$3,500.00. To the extent the arguments in Stoltenberg’s response to the Receiver’s original motion relate to unjust enrichment (ECF 158), the Receiver relies on his original reply thereto (ECF 160).

CONCLUSION

For all of the reasons stated in the Receiver’s opening brief and this reply, the Receiver respectfully submits that his Amended Motion for Summary Judgment should be granted.

Dated: May 14, 2015

Respectfully submitted,

s/ Tara C. Norgard

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