

not consider the non-movant's response to the summary judgment motion. Fitzpatrick, 2 F.3d at 1116.

If, however, the movant satisfies this initial burden, the non-movant must "come forward with evidence sufficient to call into question the inference created by the movant's evidence on the particular material fact." Id. The non-movant may not "rest upon the mere allegations or denials of the [non-movant's] pleading, but the . . . response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). Summary judgment should be granted only when, considering the combined body of evidence, no reasonable juror could find for the non-movant.

In the instant case, the record reflects that no timely response to the motion for summary judgment has been filed, indicating that it is unopposed. See Local Rule 7.1B.¹ This Court nonetheless may not merely grant the motion on the grounds that it is unopposed; instead, the Court must review all of the evidentiary materials submitted in support of the motion and must indicate that the merits of the motion were addressed. U.S. v. One Piece of Real Prop. Located at 5800 SW 74th Ave., Miami, Fla., 363 F.3d 1099, 1101-02 (11th Cir. 2004) (noting that the Court need not review all evidence in the record but must at least review the evidence submitted in support of the motion). The movant must meet its burden of establishing entitlement to summary judgment pursuant to the applicable standard.

¹ The Court hereby **STRIKES**, as woefully untimely, the response filed by Defendant Ghrabeti on January 3, 2011, more than five months after the summary judgment motion was filed in this Court and nearly two months after he was provided notice to respond to the motion. Defendant Ghrabeti did not file a motion for extension seeking additional time to respond to the summary judgment motion, and the response does not provide any explanation for the failure to timely respond. The Court, therefore, will not consider the response here.

II. UNDISPUTED FACTS

On May 17, 2006, the Securities and Exchange Commission (the "SEC") filed a complaint to stop a Ponzi scheme operated by Geoffrey A. Gish, involving Weston Rutledge Financial Services, Inc., Zamindari Capital, LLC, Lexington International Fund, LLC, a/k/a Lexington International Fund, Inc., and Oxford Adams Capital, LLC (the "Receivership Companies"). This Court granted a temporary restraining order and asset freeze against Gish and the Receivership Companies, and appointed Thomas S. Richey as Receiver of the Receivership Companies. The SEC obtained a Final Judgment against Gish pursuant to a settlement agreement with Gish, in which Gish did not deny the facts alleged by the SEC.

The SEC alleged that Gish operated a Ponzi scheme claiming that his investments were high-yield trading programs that generated lucrative profits by purchasing debt instruments from major international banks at a discount and quickly reselling them at face value. According to the SEC's complaint, the supposed investments were fraudulent "prime bank instrument schemes," involving unachievable returns through fictional trading in non-existent markets, and the Receivership Companies never received any appreciable returns of either interest or principal on any of the supposed investments made on their behalf. From February 2004 to May 2006, three hundred investors deposited approximately \$31 million into the Receivership Companies' bank accounts. Approximately \$15 million was transferred from the Receivership Companies' bank accounts to third parties who were to place the funds in risk-free, high-yield, income-generating investments and return the proceeds to the Receivership Companies. Most investors who invested funds in the Receivership Companies lost all or substantially all of their principal investments. A total of \$18 million of investor funds is missing.

The Receivership Companies were operated as a Ponzi scheme. They did not

have sufficient funds to cover their obligations, and in order to make payouts to investors of either “principal” or “interest,” the Receivership Companies had to use funds from new investors. The money paid out to Receivership Company investors was paid from funds deposited by other Receivership Company investors, rather than from any actual earnings by the Receivership Companies or the investors on any investments. On April 8, 2008, the Receiver filed the instant action against multiple Defendants who received funds from the Receivership Companies.

The Receiver alleged in this case that Zahra Ghods and her companies, Rusa Cap, Inc. (“Rusa Cap”) and Unisource Cap, LLC (“Unisource”), were key players in the Gish Ponzi scheme. According to the complaint, Ghods caused investors to make investments with the Receivership Companies, and over \$9 million was transferred to Ghods from the Receivership Companies or directly to her from investors at her direction for the supposed trading of medium-term bank notes and as commission payments to Ghods for arranging these investments. The complaint alleges that Ghods falsely told Gish, other representatives of the Receivership Companies, and investors that she, through Rusa Cap and Unisource, ran high-yield, bank note trading programs and could earn returns of as much as 30% per quarter; on other occasions during this time period, she falsely represented that the investments would earn 30% to 50% per quarter. Ghods allegedly had never operated any such trading programs, did not have any experience with trading in bank notes, and was not capable of earning such returns from any such programs. The Receiver contends that she had no legitimate or reliable access to any such trading programs and no ability to provide access to no-risk, high-yield investments for the Receivership Companies and their investors, and her promises of 30% to 50% returns were false. The complaint alleges that, relying on these representations, the Receivership Companies transferred over \$9 million to bank accounts controlled by

Ghods or others. The records of the Receivership Companies reflect that they never received any consideration, any income, or even any substantial return of principal from the funds transferred to Ghods, Rusa Cap, and Unisource. The Receiver filed a motion for default judgment against Ghods and her companies, and this Court entered judgment on October 8, 2009, in the amount of \$12,266,599.33. The SEC sued Ghods in a separate action, alleging that Ghods and Rusa Cap actively participated in the Ponzi scheme at issue in this case and that she and her companies received \$9 million in investor funds. This Court granted summary judgment to the SEC, finding that Ghods and Rusa Cap violated the antifraud provisions of the federal securities laws.

Defendant Ghrabeti is a United States citizen and a resident of California. He is Ghods' son. Ghrabeti received at least \$215,000 of funds from Ghods from May 2005 to May 2006. He knew that these funds came from investors in the Receivership Companies. He knew that the Receivership Companies were insolvent and would be rendered more insolvent when he received the funds from Ghods. Ghrabeti had not invested any funds with Ghods, and the \$215,000 was not the return of any investment or the repayment of any loan. He performed no services, conveyed no goods or property, and provided no consideration of any kind to the Receivership Companies in exchange for the \$215,000. Ghrabeti also charged at least \$40,193 on Ghods' American Express credit card. He knew that the bill for that card was paid by Ghods and that it was paid for with funds from the Receivership Companies. Ghrabeti did not provide consideration of any value to the Receivership Companies in exchange for his charges of at least \$40,193 on Ghods' American Express credit card. He knew that the Receivership Companies were insolvent and would be rendered more insolvent when he was charging at least \$40,193 on Ghods' card. On October 1, 2007, the Receiver made a demand on

Ghrabeti for the return of the \$255,193.05 in Receivership Companies' funds he had received. According to the Receiver's accountants, Ghrabeti received \$257,120 from the Receivership Companies. He has failed to make payment of any amount.

III. LEGAL ANALYSIS

Plaintiff seeks summary judgment on the following claims: (1) fraudulent transfer, (2) unjust enrichment and constructive trust, (3) money had and received, and (4) attorneys' fees. Plaintiff additionally seeks an award of pre-judgment interest on funds received by Defendant Ghrabeti and sought in this action.

A. *Fraudulent Transfer*

Plaintiff contends that the amounts received by Defendant Ghrabeti are fraudulent transfers. This Court agrees. The Uniform Fraudulent Transfer Act provides as follows:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) Intended to incur, or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

O.C.G.A. § 18-2-74(a). As an initial matter, the evidence establishes that the Receivership Companies, though Ghods, made transfers to Defendant Ghrabeti with actual intent to defraud the creditors of the Receivership Companies. The

Receivership Companies were operated as a Ponzi scheme.² The amounts that the Receivership Companies paid to investors were not returns on their investments because none of the initial amounts transferred to the Receivership Companies were actually invested. Instead, the funds received were from new investors.

“Under [the Uniform Fraudulent Transfer Act], transfers made from a Ponzi scheme are presumptively made with intent to defraud, because a Ponzi scheme is, as a matter of law, insolvent from inception.” Quilling v. Schonsky, 247 Fed. Appx. 583, 586 (5th Cir. 2007); see also In re C.F. Foods, LP, 280 B.R. 103, 111 (E.D. Penn. 2002); In re Slatkin, 525 F.3d 805, 814 (9th Cir. 2008). “Courts have routinely applied [the Uniform Fraudulent Transfer Act] to allow receivers . . . to recover monies lost by Ponzi scheme investors.” Donell v. Kowell, 533 F.3d 762, 767 (9th Cir. 2008). The simple existence of a Ponzi scheme has been found sufficient to establish actual intent for the purposes of the Uniform Fraudulent Transfer Act. See Slatkin, 525 F.3d at 814. The Court so finds here.

The Court additionally finds, for the reasons stated by Plaintiff, that the funds transferred to Defendant Ghrabeti were made without the Receivership Companies receiving a reasonably equivalent value in exchange and that (1) the Receivership Companies were engaged in a business for which the remaining assets were correspondingly small in relation to the nature of the business and (2) the Receivership Companies intended to incur debts beyond their ability to repay. The Court concludes that Defendant Ghrabeti received fraudulent transfers in the total amount of \$257,120.00 as a matter of law.

² A Ponzi scheme is “an investment scheme whereby returns to investors are financed, not through the success of an underlying business venture, but from the principal sums of newly attracted investors.” Rasch v. State, 260 Ga. App. 379, 379 n.1, 579 S.E.2d 817, 818 n.1 (2003).

B. Unjust Enrichment and Money Had and Received

As alternative theories of recovery, the Receiver argues that Defendant Ghrabeti is liable for unjust enrichment and for money had and received. The Court agrees with the Receiver's arguments, and finds that, for the reasons stated by the Receiver, Defendant Ghrabeti alternatively is liable as a matter of law under these two theories.

C. Costs and Attorneys' Fees

Plaintiff seeks an award of attorneys' fees and expenses in this case. O.C.G.A. § 13-6-11 provides that a plaintiff may recover such amounts "where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense." The Court finds that Defendant Ghrabeti has been stubbornly litigious and has caused the Receiver unnecessary trouble and expense by failing to respond to the Receiver's October 1, 2007 demand letter and by failing to respond to the Receiver's discovery requests. Essentially, Defendant Ghrabeti has not participated in this litigation. The Court finds, as a matter of law, that Plaintiff is entitled to recover fees and expenses pursuant to O.C.G.A. § 13-6-11.

D. Pre-judgment Interest

Plaintiff submits that an award of pre-judgment interest is appropriate in this action, insofar as the amounts received by Defendant Ghrabeti were sums certain. O.C.G.A. § 7-4-15 provides that liquidated demands bear interest from the time the responsible party becomes liable and bound to pay them. The rate applied is 7 percent per annum simple interest. O.C.G.A. § 7-4-2. The Court agrees that an award of pre-judgment interest is warranted here. Plaintiff proposes two dates for the calculation of pre-judgment interest in this case -- the date this lawsuit was filed (May 17, 2006) or the date of Plaintiff's demand letter (October 1, 2007). The Court finds that the date of the demand letter is the appropriate date for the calculation of

pre-judgment interest in this case, and the Court will award pre-judgment interest on the amount demanded in that letter, \$255,193.05.

IV. CONCLUSION

For the reasons stated above and for the reasons stated by Plaintiff, the Court **GRANTS** Plaintiff's Motion for Partial Summary Judgment as to Defendant Purya Ghrabeti [Doc. No. 101]. The Clerk of Court is **INSTRUCTED** to enter judgment in favor of Plaintiff and against Defendant Ghrabeti in the principal amount of \$257,120.00, plus pre-judgment interest on \$255,193.05 of that amount at a rate of 7% per annum simple interest dating from October 1, 2007.

The Court **DIRECTS** Plaintiff to file sufficient documentation and information necessary for the Court to determine the amount of expenses that should be awarded pursuant to O.C.G.A. § 13-6-11 within the next thirty (30) days.

The parties are **DIRECTED** to file a proposed joint consolidated pretrial order as to the claims that were not addressed in Plaintiff's motion for summary judgment or in this Order.

SO ORDERED this 31st day of March, 2011.

s/ CLARENCE COOPER

CLARENCE COOPER
SENIOR UNITED STATES DISTRICT JUDGE